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TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 8—PROMOTION, DEMOTION, AND RE-ASSIGNMENT AND MOVEMENT OF EMPLOYEES BETWEEN AGENCIES WITH REEMPLOYMENT RIGHTS

RESTRICTIONS ON PROMOTION, TRANSFER OR APPOINTMENT TO HIGHER GRADE, AND RE-ASSIGNMENT TO DIFFERENT LINE OF WORK

Effective November 1, 1951, § 8.109 is amended to read as follows:

§ 8.109 *Restrictions on promotion, transfer or appointment to a higher grade, and reassignment to a different line of work*—(a) *Reassignment after competitive appointment*. No person who has been given a competitive appointment under § 2.113 or § 2.115 (a) or (b) of this chapter shall be reassigned to a different line of work within three months after such appointment if the position to be filled is not higher than grade GS-5 (or equivalent) or within six months after such appointment if the position is higher than grade GS-5 (or equivalent).

(b) *Actions to grade GS-5 or below (or equivalent)*. (1) No employee or former employee may be promoted, transferred to a higher grade, or appointed to a higher grade within three months after his last competitive appointment under § 2.113 or § 2.115 (a) or (b), of this chapter, and

(2) No employee or former employee may be advanced more than two grades above the lowest grade he held within the past twelve months under permanent or indefinite appointment. This advancement may be two grades at one time or in two separate actions.

(c) *Actions to grade GS-6 or above (or equivalent)*. (1) No employee or former employee may be promoted, transferred to a higher grade, or appointed to a higher grade within twelve months after the permanent or indefinite appointment which began his latest period of continuous Federal employment, or after his last promotion, transfer to a higher grade, or appointment to a higher grade (whichever is later), and

(2) No employee or former employee may be advanced more than one grade above the lowest grade he held within the

past twelve months under permanent or indefinite appointment. However, in the following cases he may be advanced two grades above the lowest grade he held within the past twelve months when the position to be filled is:

(i) Not higher than grade GS-11 (or equivalent) and is in a line of work properly classified at two-grade intervals under the Classification Act of 1949, or properly established at equivalent intervals under other wage fixing authority; or

(ii) In the agency in which he is serving if there is no position in the normal line of promotion in the grade immediately below that of the position to be filled and prior approval of the Commission has been obtained.

(d) *Training agreements*. The restrictions in this section shall not apply to any person who is being promoted in accordance with a training agreement which has been approved by the Commission. Such agreements shall not provide for advancement of more than two grades (or equivalent) within any twelve-month period. For further advancement to GS-6 (or equivalent) or above, any time or grade requirement in accordance with paragraph (c) of this section shall begin with the effective date of the last promotion under the training agreement. For all grades, further promotions shall not result in advancement of more than two grades within any twelve-month period.

(e) *Persons demoted or separated by reduction in force*. The restrictions in this section shall not apply to any person who is being advanced to any grade or level up to that from which he had ever been demoted or separated, by any agency, because of reduction in force. Any time or grade requirement for advancement above the grade or level from which he had been separated or demoted shall begin with the effective date of his advancement to that grade.

(f) *Persons within reach on registers*. The restrictions in this section shall not apply to any person who is within reach on a civil service register for competitive appointment to the position to be filled. Any time or grade requirement for further advancement shall begin with the effective date of the action permitted by this paragraph.

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(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] L. A. MOYER,

Executive Director.

[F. R. Doc. 51-13705; Filed, Nov. 14, 1951; 8:54 a. m.]

TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Production and Marketing Administration and Commodity Credit Corporation, Department of Agriculture

Subchapter C—Loans, Purchases, and Other Operations

[1951 C. C. C. Grain Price Support Bulletin 1, Supp. 1, Amtd. 3, Rice]

PART 601—GRAINS AND RELATED COMMODITIES

SUBPART—1951-CROP RICE LOAN AND PURCHASE AGREEMENT PROGRAM

MISCELLANEOUS AMENDMENTS

Regulations issued by the Commodity Credit Corporation and the Production and Marketing Administration published in 16 F. R. 6907, 7869, and 10106, and containing the requirements for the 1951-crop rice loan and purchase agreement program are hereby amended as follows:

1. Section 601.1002 (e) (2) is amended by changing subdivision (i) to clarify the eligibility provision thereof so that the amended subparagraph reads as follows:

§ 601.1002 *Availability of price support.* * * *

(e) *Eligible producer.* * * *

(2) Cooperative marketing associations of producers shall be eligible for warehouse-storage loans and purchase agreements on eligible rice produced by eligible producer members: *Provided, That:*

(i) The terms and conditions under which producer members' rice is marketed through the association are set out in a Uniform Marketing Agreement and are applicable to all rice delivered to the association by producer members.

(ii) The major part of the rice marketed by the association is produced by members who are eligible producers.

(iii) The members share proportionately in the proceeds from marketings according to the quantity and quality of rice each delivers to the association.

(iv) The association has the legal right to pledge or mortgage the rice as security for a loan.

2. Section 601.1006 *Determination of quality* is amended by changing from "April 30, 1952" to "April 15, 1952," the date which appears in the second sentence of the last paragraph so that the sentence reads as follows: "In all other cases, the producer shall, prior to delivery of the rice to CCC, submit an official Federal or Federal-State lot inspection certificate dated subsequent to April 15, 1952."

3. Section 601.1010 (a) is amended by changing from "April 30, 1952" to "April 15, 1952" the date which appears in the third sentence so that the sentence reads as follows: "The producer shall, at his expense, furnish to the county committee at the time of delivery official weight certificates and Federal or Federal-State lot inspection certificates dated subsequent to April 15, 1952."

4. Section 601.1010 (b) is amended to provide for grade and yield determinations on the basis of inspection certificates dated subsequent to April 15, 1952, so that the paragraph reads as follows:

§ 601.1010 *Settlement.* * * *

(b) *Purchase agreements.* Eligible rice will be purchased at the support rate applicable to the grade and yield of the rice determined on the basis of an official Federal or Federal-State lot inspection certificate dated subsequent to April 15, 1952.

(Sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. Supp. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; 15 U. S. C. Supp., 714c, 7 U. S. C. Supp., 1441, 1421)

Issued this 8th day of November 1951.

[SEAL]

JOHN H. DEAN,

Acting Vice President,

Commodity Credit Corporation.

Approved:

HAROLD K. HILL,

Acting President,

Commodity Credit Corporation.

[F. R. Doc. 51-13669; Filed, Nov. 14, 1951; 8:49 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Production and Marketing Administration (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

SUBPART B—UNITED STATES STANDARDS FOR GRADES OF PROCESSED FRUITS, VEGETABLES, AND OTHER PRODUCTS¹

U. S. STANDARDS FOR GRADES OF CANNED PEARS

On September 25, 1951, a notice of proposed rule making was published in the FEDERAL REGISTER (16 F. R. 9726) regarding a proposed revision of the United States Standards for Grades of Canned Pears. After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, the revised United States Standards for Grades of Canned Pears which follow are hereby promulgated under the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.) and the Department of Agriculture Appropriation Act, 1952 (Pub. Law 135, 82d Cong., approved August 31, 1951).

The Department finds that it is unnecessary and contrary to the public interest to give a 30-day notice of the effective date of the standards herewith published for the reasons that:

(1) Canned pears of the 1951 pack are moving into marketing channels and because of defense procurement programs it is essential that these standards which reflect current processing prac-

¹The requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

tices be made effective in 15 days after publication;

(2) The industry had an opportunity to appraise these standards which were published under rule making procedure;

(3) No additional preparation on the part of the industry is required;

(4) Only minor revisions in text have been made from the notice of proposed rule making; and

(5) The revised standards will create no hardship to the industry; therefore, the effective date of the standards will be 15 days after the date of publication in the FEDERAL REGISTER.

§ 52.527 *Canned pears.* "Canned pears" means the canned product prepared from properly prepared, mature pears, as such product is defined in the standard of identity for canned pears (21 CFR 27.20) issued pursuant to the Federal Food, Drug, and Cosmetic Act. For the purposes of these standards, canned pears when referred to as "canned 'solid-pack' pears" means prepared pears, packed without a liquid packing medium, sufficiently processed by heat to assure preservation of the product in hermetically sealed containers.

(a) *Styles of canned pears.* (1) "Halves" or "halved" canned pears are peeled pears, with cores and stems removed, cut longitudinally from stem to calyx into approximate halves.

(2) "Unpeeled halves" or "unpeeled halved" canned pears are unpeeled pears, with cores and stems removed, cut longitudinally from stem to calyx into approximate halves.

(3) "Quarters" or "quartered" canned pears are peeled pears, with cores and stems removed, cut longitudinally from stem to calyx into approximate quarters.

(4) "Slices" or "sliced" canned pears are peeled pears, with cores and stems removed, cut longitudinally from stem to calyx into approximately equal segments smaller than quarters.

(5) "Dice" or "diced" canned pears are peeled pears, with cores and stems removed, cut into approximate cubes.

(6) "Whole" canned pears are peeled, uncured, whole pears with or without stems removed.

(7) "Unpeeled whole" canned pears are unpeeled, uncured, whole pears with or without stems removed.

(8) "Mixed pieces of irregular sizes and shapes" are peeled and cored units of canned pears that are predominantly irregular in size and shape and which do not conform to a single style of halves, quarters, slices, dice, or whole and may consist of:

(i) Units (commonly called "salad cuts" or "salad pieces") which may have been prepared originally as pear halves but which are irregular in size and shape in that more than one-fourth of the unit appears to have been removed at the outer curved surface or which have been further cut into pieces of irregular sizes and shapes; and

(ii) Mixtures of two or more of the following styles which may or may not be of normal shape: Halves, quarters, slices, dice, or whole.

(b) *Grades of canned pears.* (1) "U. S. Grade A" or "U. S. Fancy" is the

quality of halves, unpeeled halves, quarters, slices, diced, whole, or unpeeled whole canned pears that are practically free from defects; that possess a good character; that possess a normal flavor and odor; and that are of such quality with respect to color and with respect to uniformity of size and symmetry for the applicable style as to score not less than 90 points when scored in accordance with the scoring system outlined in this section.

(2) "U. S. Grade B" or "U. S. Choice" is the quality of halves, unpeeled halves, quarters, slices, diced, whole, unpeeled whole, or mixed pieces of irregular sizes and shapes of canned pears that possess at least a reasonably good color for the applicable style; that are at least reasonably free from defects; that possess at least a reasonably good character; that possess a normal flavor and odor; and that are of such quality with respect to uniformity of size and symmetry for the applicable style as to score not less than 80 points when scored in accordance with the scoring system outlined in this section.

(3) "U. S. Grade C" or "U. S. Standard" is the quality of halves, unpeeled halves, quarters, slices, diced, whole, unpeeled whole, or mixed pieces of irregular sizes and shapes of canned pears that possess a fairly good color; that are fairly free from defects; that possess a fairly good character; that possess a normal flavor and odor; and that are of such quality with respect to uniformity of size and symmetry for the applicable style as to score not less than 70 points when scored in accordance with the scoring system outlined in this section.

(4) "Substandard" is the quality of canned pears that fail to meet the requirements of U. S. Grade C or U. S. Standard and is the quality of canned pears that may or may not meet the minimum standard of quality for canned pears issued pursuant to the Federal Food, Drug, and Cosmetic Act.

(c) *Grades of canned solid-pack pears.*

(1) "U. S. Grade B Solid-Pack" or "U. S. Choice Solid-Pack" is the quality of halves, unpeeled halves, or mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that possess at least a reasonably good color; that are at least reasonably free from defects for canned "solid-pack" pears; that possess at least a reasonably good character for canned "solid-pack" pears; that possess a normal flavor and odor; and that score not less than 80 points when scored in accordance with the scoring system outlined in this section.

(2) "U. S. Grade C Solid-Pack" or "U. S. Standard Solid-Pack" is the quality of halves, unpeeled halves, or mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that possess a fairly good color; that are fairly free from defects for canned "solid-pack" pears; that possess a fairly good character for canned "solid-pack" pears; that possess a normal flavor and odor; and that score not less than 70 points when scored in accordance with the scoring system outlined in this section.

(3) "Substandard Solid-Pack" is the quality of halves, unpeeled halves, or

mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that fail to meet the requirements of "U. S. Grade C Solid-Pack" or "U. S. Standard Solid-Pack".

(d) *Liquid media and Brix measurements for canned pears.* "Cut-out" requirements for liquid media in canned pears are not incorporated in the grades of the finished product since sirup or any other liquid medium, as such, is not a factor of quality for the purposes of these grades. The "cut-out" Brix measurement, as applicable, for the respective designations are as follows:

Designations	Brix measurement
"Extra heavy sirup" or "Extra heavy pear juice sirup".	22° or more but not more than 35°.
"Heavy sirup" or "Heavy pear juice sirup".	18° or more but less than 22°.
"Light sirup" or "Light pear juice sirup".	14° or more but less than 18°.
"Slightly sweetened water" or "Slightly sweetened pear juice".	Less than 14°.
"In water"-----	Packed in water.
"In pear juice"-----	Packed in pear juice.

(e) *Fill of container for canned pears.* The standard of fill of container for canned pears is the maximum quantity of the pear units which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient. Canned pears that do not meet this requirement are "Below Standard in Fill."

(f) *Recommended fill of container for canned "solid-pack" pears.* The recommended fill of container for canned "solid-pack" pears is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of "solid-pack" pears be filled as full as practicable without impairment of quality and that the product occupy not less than 90 percent of the volume of the container.

(g) *Recommended minimum drained weight.* The minimum drained weight recommendations for the various applicable styles in Table I and Table II of this section are not incorporated in the grades of the finished product since drained weight, as such, is not a factor of quality for the purposes of these grades. The drained weight of canned pears and canned "solid-pack" pears is determined by emptying the contents of the container, turning the pit cavities down in halves, upon a United States Standard No. 8 circular sieve of proper diameter containing 8 meshes to the inch (0.0937-inch $\pm$ 3 percent, square openings) so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for two minutes. The drained weight is the weight of the sieve and pears less the weight of the dry sieve. A sieve 8 inches in diameter is used for the equivalent of No. 3 size cans (404 x 414) and smaller, and a sieve 12 inches in diameter

ter is used for containers larger than the equivalent of the No. 3 size can.

(1) *Compliance with recommended drained weights.* Compliance with the recommended drained weights for canned pears and canned "solid-pack" pears is determined by averaging the drained weights from all the containers which are representative of a specific lot and such lot is considered as meeting the recommendations, for the applicable styles, if in:

(i) *Halves and unpeeled halves.* (a) The average of the drained weights from all of the containers meets the average of the recommended drained weights for the counts from the containers examined;

(b) One-half or more of the containers meet the recommended drained

weight from the respective count found; and

(c) The drained weights from the containers which do not meet the recommended drained weight for the count found are within the range of variability for good commercial practice.

(ii) *Quarters; slices; diced; mixed pieces of irregular sizes and shapes.*

(a) The average drained weight from all the containers meets the recommended drained weight;

(b) One-half or more of the containers meet the recommended drained weight; and

(c) The drained weights from the containers which do not meet the recommended drained weight are within the range of variability for good commercial practice.

TABLE I—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR HALVES AND UNPEELED HALVES

Range of count of halves per container	Any grade in any sirup or other liquid medium							
	Metal containers						Glass containers	
	8 Z Tall (211 x 304)	No. 1 Tall (301 x 411)	No. 303 (303 x 406)	No. 2 (307 x 409)	No. 2½ (401 x 411)	No. 10 (603 x 700)	No. 303	No. 2½
3 to 6.....	Ounces 4½	Ounces 9	Ounces 9	Ounces 11	Ounces 16	Ounces	Ounces 9	Ounces 16
7 to 9.....	4½	9½	9½	11½	16½		9½	16½
10 to 12.....		9½	9½	11½	17			16½
13 to 15.....					17½			16½
16 to 22.....					18	62		17
23 to 30.....						62½		
31 to 40.....						63		
41 and over.....						63		
"Solid-pack" only—Metal containers								
	No. 2½ (401 x 411)			No. 10 (603 x 700)				
Any count.....	24 ounces			90 ounces				

TABLE II—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR QUARTERS, SLICES, DICED, AND MIXED PIECES OF IRREGULAR SIZES AND SHAPES

Container designation (metal, unless otherwise stated)	Container size—over-all dimensions		Any grade in any sirup or other liquid medium			
	Width	Height	Quarters	Slices	Diced	Mixed pieces of irregular sizes and shapes
	Inches	Inches	Ounces	Ounces	Ounces	Ounces
8 Z tall.....	2½	3½	5	5	5	
8 oz. glass.....			5	5	5	
No. 1 tall.....	3½	4½	9½	9½	9½	
No. 303.....	3½	4½	9½	9½	9½	
303 glass.....			9½	9½	9½	
No. 2.....	3½	4½	12½	12½	12½	
No. 2½.....	4½	4½	17½	17½	17½	
No. 2½ glass.....			17½	17½	17½	
No. 10.....	6½	7	65	65	65	65
"Solid-pack" only—mixed pieces of irregular sizes and shapes						
No. 2½.....	4½	4½	24 ounces			
No. 10.....	6½	7	90 ounces			

(h) *Ascertaining the grade.* (1) The grade of canned pears is ascertained by considering, in conjunction with the requirements of the respective grade, the respective ratings for the factors of color, uniformity of size and symmetry, absence of defects, and character.

(2) The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

Factors:	Points
(i) Color.....	20
(ii) Uniformity of size and symmetry.....	20
(iii) Absence of defects.....	30
(iv) Character.....	30
Total score.....	100

(3) "Normal flavor and odor" means that the canned pears are free from objectionable flavors and objectionable odors of any kind.

(i) *Ascertaining the rating for the factors which are scored.* The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, "17 to 20 points" means 17, 18, 19, or 20 points).

(1) *Color.* The factor of color refers to the color typical of the variety and its uniformity in each unit and among the units. The factor of color for canned pears that are unpeeled or spiced is not based on any detailed requirements and is not scored but the color shall be normal for unpeeled or spiced canned pears; the other three factors (uniformity of size and symmetry, absence of defects, and character as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(i) Halves, quarters, slices, diced, or whole canned pears that possess a good color may be given a score of 18 to 20 points. "Good color" means that the units of pears individually and collectively possess a characteristic, practically uniform color that is typical white or light yellow-white; that there is no more than a slight variation from an ideal color and translucency for properly prepared and properly processed canned pears; and that in halves, quarters, slices, or whole not more than 10 percent by count of the units may possess "reasonably good color", provided none of such units are "dead white" (or "chalky") in appearance. One unit of halves, quarters, slices, or whole in a single container is permitted to be "reasonably good color" if such unit exceeds the allowance of 10 percent by count.

(ii) Halves, quarters, slices, diced, or whole canned pears that possess a reasonably good color; mixed pieces of irregular sizes and shapes of canned pears that possess at least a reasonably good color; and halves or mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that possess at least a reasonably good color may be given a score of 16 or 17 points. Mixed pieces of irregular sizes and shapes of canned pears and halves or mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice or U. S. Grade B Solid-pack or U. S. Choice Solid-Pack, whichever is applicable, regardless of the total score for the product (this is a limiting rule). "Reasonably good color" means that the units of pears individually and collectively possess a reasonably uniform and reasonably characteristic color that may show a very slight tint of pink or brown; that may show a slight lack of uniformity; that may vary slightly in translucency; and that in halves, quarters, slices, whole, or mixed pieces of irregular sizes and shapes not more than 10 percent by count of the units may possess "fairly good color" including units that may be "dead white" (or "chalky") in appearance. One unit of halves, quarters, slices, whole, or of mixed pieces of irregular sizes and shapes in a single container is permitted to be "fairly good

color" including a unit that may be "dead white" (or "chalky") in appearance if such unit exceeds the allowance of 10 percent by count.

(iii) Halves, quarters, slices, diced, whole, or mixed pieces of irregular sizes and shapes of canned pears and halves or mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that possess a fairly good color may be given a score of 14 or 15 points. Canned pears or canned "solid-pack" pears that fall into this classification shall not be graded above U. S. Grade C or U. S. Standard or U. S. Grade C Solid-Pack or U. S. Standard Solid-Pack, whichever is applicable, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means that the units of pears individually and collectively may vary noticeably from a uniform, characteristic color; may be "dead white" (or "chalky") in appearance; may have a slight pink or brown cast but not a definitely pink or brown color; and are not off-color for any reason.

(iv) Canned pears and canned "solid-pack" pears that fail to meet the requirements of subdivision (iii) of this subparagraph may be given a score of 0 to 13 points and shall not be graded above Substandard or Substandard Solid-Pack, whichever is applicable, regardless of the total score for the product (this is a limiting rule).

(2) *Uniformity of size and symmetry.* The factor of uniformity of size and symmetry for mixed pieces of irregular sizes and shapes of canned pears and for canned "solid-pack" pears is not based on any detailed requirements and is not scored; the other three factors (color, absence of defects, and character as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(i) Halves, unpeeled halves, quarters, slices, diced, whole, or whole unpeeled canned pears that are practically uniform in size and symmetry may be given a score of 18 to 20 points. "Practically uniform in size and symmetry" has the following meanings with respect to the following styles of canned pears:

(a) *Halves, unpeeled halves, quarters, whole, unpeeled whole.* The units are very symmetrical and the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 40 percent; the weight of each half is not less than $\frac{3}{10}$ ounce; and the weight of each quarter is not less than $\frac{3}{10}$ ounce.

(b) *Slices.* Not more than 10 percent by count of the units vary noticeably from the uniform shape of slices.

(c) *Diced.* Not more than 10 percent by weight of the units are more than $\frac{3}{4}$ inch in greatest edge dimension or pass through a $\frac{5}{16}$ -inch square opening.

(ii) Halves, unpeeled halves, quarters, slices, diced, whole unpeeled, or whole canned pears that are reasonably uniform in size and symmetry may be given a score of 16 or 17 points. "Reasonably uniform in size and symmetry" has the following meanings with respect to the following styles of canned pears:

(a) *Halves, unpeeled halves, quarters, whole, unpeeled whole.* The units are reasonably symmetrical and the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 60 percent; the weight of each half is not less than $\frac{3}{10}$ ounce; and the weight of each quarter is not less than $\frac{3}{10}$ ounce.

(b) *Slices.* Not more than 15 percent by count of the units vary noticeably from the uniform shape of slices.

(c) *Diced.* Not more than 15 percent by weight of the units are more than $\frac{3}{4}$ inch in greatest edge dimension or pass through a $\frac{5}{16}$ -inch square opening.

(iii) Halves, unpeeled halves, quarters, slices, diced, whole, or unpeeled whole canned pears that are fairly uniform in size and symmetry may be given a score of 14 or 15 points. "Fairly uniform in size and symmetry" has the following meanings with respect to the following styles of canned pears:

(a) *Halves, unpeeled halves, quarters, whole, unpeeled whole.* The units may vary in size, thickness, and symmetry and the weight of the largest full-size unit may be not more than twice the weight of the smallest full-size unit; the weight of each half is not less than $\frac{3}{10}$ ounce; and the weight of each quarter is not less than $\frac{3}{10}$ ounce.

(b) *Slices.* Not more than 20 percent by count of the units vary noticeably from the uniform shape of slices.

(c) *Diced.* Not more than 20 percent by weight of the units are more than $\frac{3}{4}$ inch in greatest edge dimension or pass through a $\frac{5}{16}$ -inch square opening.

(iv) Canned pears of the applicable styles which fail to meet subdivision (iii) of this subparagraph may be given a score of 0 to 13 points and shall not be graded above the following stated grade, regardless of the total score for the product (this is a limiting rule):

(a) Halves, unpeeled halves, quarters, whole, or unpeeled whole canned pears in which the weight of the largest full-size unit is more than twice the weight of the smallest full-size unit shall not be graded above Substandard and are also "Below Standard in Quality—Mixed Sizes."

(b) Halves or unpeeled halves of canned pears in which the weight of any half is less than $\frac{3}{10}$ ounce shall not be graded above Substandard and are also "Below Standard in Quality—Small Halves."

(c) Quarters of canned pears in which the weight of any quarter is less than $\frac{3}{10}$ ounce shall not be graded above Substandard and are also "Below Standard in Quality—Small Quarters."

(d) Slices and diced canned pears shall not be graded above Substandard.

(3) *Absence of defects.* The factor of absence of defects refers to the degree of freedom from peel, from blemished units, from units that are crushed or broken, from trimmed units for the applicable styles, and from any other defects which detract from the appearance or edibility of the product.

(i) "Blemished" or "blemished units" means units that are blemished with scab, hail injury, discoloration, or other abnormality covering an aggregate area exceeding the area of a circle $\frac{1}{4}$ inch in

diameter. Units with black or very dark spots or any other damage which materially affect the appearance or edibility of the product are considered as "blemished", regardless of the area of the injury.

(ii) "Crushed or broken" means that (a) A unit of halves, unpeeled halves, quarters, slices, whole, and unpeeled whole canned pears is "crushed" if the unit has lost its normal shape and bears marks of crushing or is otherwise crushed not due to ripeness; and

(b) A unit of halves, unpeeled halves, quarters, slices, whole, and unpeeled whole canned pears is "broken" if severed into definite parts; halves or unpeeled halves of canned pears that are slightly split from the edge to the core cavity or at the stem end are not considered broken. Portions equivalent to a full-size unit that has been broken are considered as one unit in determining the percentage by count.

"Crushed or broken" units are not considered defects in the style of diced or mixed pieces of irregular sizes and shapes of canned pears nor in the styles of halves, unpeeled halves, and mixed pieces of irregular sizes and shapes of canned "solid-pack" pears.

(iii) "Stem" means an entire or partial external stem, whether or not attached, and is considered a defect in the applicable style of halves, unpeeled halves, quarters, slices, diced, or mixed pieces of irregular sizes and shapes.

(iv) "Cored and stemmed" means the removal of the calyx and seed cell cavity and, if applicable, the removal of the interior stem. "Stemming" refers to the removal of the interior stem.

(v) The degrees of trimming in the various styles of canned pears have the following meanings for the applicable styles:

(a) *Halves canned pears.* (i) "Insignificantly trimmed" means that the unit is trimmed to preserve the normal shape of a half and that the unit

(i) Possesses smooth contours on the backs and edges and may possess slight indentations or slight knife marks on the backs and edges that are insignificant in appearance;

(ii) Is symmetrically cored and stemmed no deeper than necessary to remove neatly and cleanly the calyx, seed cell cavity, and interior stem;

(iii) Possesses a distinct "bridge" or tie between the seed cell cavity and points where the calyx has been removed;

(iv) Possesses an untrimmed face; and

(v) Is free from marks of "double stemming."

(2) "Slightly trimmed" means that the unit is trimmed but the normal shape of a half remains and that the unit

(i) Possesses reasonably smooth backs and edges and may possess significant indentation or significant knife marks on the backs and edges that do not materially affect the appearance of the unit;

(ii) May be cored and stemmed deeper than necessary to remove the calyx, seed cell cavity, and interior stem or may not be symmetrically cored and stemmed but is cored and stemmed reasonably neat and reasonably clean;

(iii) May lack a distinct "bridge" or tie between the seed cell cavity and points where the calyx has been removed;

(iv) May possess slight trimming on the face; and

(v) May show marks of "double stemming."

(3) "Moderately trimmed" means that the unit may be noticeably trimmed but retains the resemblance of a pear half and that the unit

(i) May possess gouges or similar cuts on the backs or edges or may possess indentations or knife marks on the backs or edges that do not seriously affect the appearance of the unit;

(ii) May be deeply cored and stemmed or may not be symmetrically, neatly, and cleanly cored and stemmed;

(iii) May or may not have the interior stem removed;

(iv) May possess moderate trimming on the face; and

(v) May show marks of "double stemming."

(4) "Seriously trimmed" means that the unit is trimmed on the backs and edges or that portions are cut across such surfaces or away from such units but that the shape of a pear half remains.

(b) *Quarters; whole canned pears.*
(1) "Insignificantly trimmed" means that the unit is trimmed to preserve the normal shape of the unit and that the unit

(i) Possesses smooth contours or well-defined edges, as applicable; and

(ii) May possess slight indentations or slight knife marks that are insignificant in appearance.

(2) "Slightly trimmed" means that the unit is trimmed but the normal shape of the unit remains and that the unit

(i) Possesses reasonably smooth contours or reasonably well-defined edges, as applicable; and

(ii) May possess significant indentations or significant knife marks that do not materially affect the appearance of the unit.

(3) "Moderately trimmed" means that the unit may be noticeably trimmed but retains the resemblance of a normal shape for the unit and that the unit

(i) May possess gouges or similar cuts on the surface or edges, as applicable, that do not seriously affect the appearance of the unit.

(4) "Seriously trimmed" means that the unit is trimmed on the surface or edges, as applicable, but that the applicable shape for the unit remains.

(c) *Unpeeled halves canned pears.*

(1) "Insignificantly trimmed" means that no more than insignificant trimming may be present on the edges or on the unpeeled surface and that the unit

(i) May possess slight indentations or slight knife marks that are insignificant in appearance;

(ii) Is symmetrically cored and stemmed no deeper than necessary to remove neatly and cleanly the calyx, seed cells, and interior stem;

(iii) Possesses a distinct "bridge" or tie between the seed cell cavity and points where the calyx has been removed;

(iv) Possesses an untrimmed face; and

(v) Is free from marks of "double stemming."

(2) "Slightly trimmed" means that the unit

(i) May be slightly trimmed on the edges or on the unpeeled surface and may possess significant indentations or significant knife marks that do not materially affect the appearance of the unit;

(ii) May be cored and stemmed deeper than necessary to remove the calyx, seed cell cavity, and interior stem or may not be symmetrically cored and stemmed but is cored and stemmed reasonably neat and reasonably clean;

(iii) May lack a distinct "bridge" or tie between the seed cell cavity and points where the calyx has been removed;

(iv) May possess slight trimming on the face; and

(v) May show marks of "double stemming."

(3) "Moderately trimmed" means that the unit may be noticeably trimmed on the edges or on the unpeeled surface but retains the resemblance of a pear half and that the unit

(i) May possess indentations or knife marks that do not seriously affect the appearance of the unit;

(ii) May be deeply cored and stemmed or may not be symmetrically, neatly, and cleanly cored and stemmed;

(iii) May or may not have the interior stem removed;

(iv) May possess moderate trimming on the face; and

(v) May show marks of "double stemming."

(4) "Seriously trimmed" means that the unit is trimmed on the edges or on the unpeeled surface or that portions are cut across or away from such surfaces but that the shape of a pear half remains.

(d) *Unpeeled whole canned pears.*

(1) "Insignificantly trimmed" means that no more than insignificant trimming may be present on the unpeeled surface and that the unit may possess slight indentations or slight knife marks that are insignificant in appearance.

(2) "Slightly trimmed" means that the unit may be slightly trimmed on the unpeeled surface and may possess significant indentations or significant knife marks that do not materially affect the appearance of the unit.

(3) "Moderately trimmed" means that the unit may be noticeably trimmed on the unpeeled surface but retains the resemblance of a whole pear and that the unit may possess indentations or knife marks that do not seriously affect the appearance of the unit.

(4) "Seriously trimmed" means that the unit is trimmed on the unpeeled surface but that the shape of a whole pear remains.

(iv) Halves, unpeeled halves, quarters, slices, diced, whole, or unpeeled whole canned pears that are practically free from defects may be given a score of 27 to 30 points. "Practically free from defects" means that the canned pears are practically free from any defects not specifically mentioned that affect the ap-

pearance or edibility of the product, and, in addition, has the following meanings with respect to the following styles of canned pears:

(a) *Halves; quarters canned pears.* Not more than an average of $\frac{1}{8}$ square inch of peel per 1 pound of net contents may be present; no stems nor loose or partially loose cores may be present; the units may be insignificantly trimmed but none of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken, slightly trimmed, moderately trimmed, or any combination thereof; and not more than 5 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken, slightly trimmed, or moderately trimmed and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent and 5 percent by count: *Provided*, That in all containers comprising the sample such crushed, broken, slightly trimmed, and moderately trimmed units do not exceed an average of 10 percent by count of the total number of units and that such blemished units do not exceed an average of 5 percent by count of the total number of units.

(b) *Whole canned pears.* Not more than an average of $\frac{1}{8}$ square inch of peel per 1 pound of net contents may be present; the units may be insignificantly trimmed but none of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken, slightly trimmed, moderately trimmed, or any combination thereof; and not more than 5 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken, slightly trimmed, or moderately trimmed and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent and 5 percent by count: *Provided*, That in all containers comprising the sample such crushed, broken, slightly trimmed, and moderately trimmed units do not exceed an average of 10 percent by count of the total number of units and that such blemished units do not exceed an average of 5 percent by count of the total number of units.

(c) *Unpeeled halves canned pears.* No stems nor loose or partially loose cores may be present; the units may be insignificantly trimmed but none of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken, slightly trimmed, moderately trimmed, or any combination thereof; and not more than 5 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken, slightly trimmed, or moderately trimmed and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent and 5 percent by count: *Provided*, That in all containers comprising the sample such crushed, broken, slightly trimmed, and moderately trimmed units do not exceed an average of 10 percent by count of the total number of units and that such

blemished units do not exceed an average of 5 percent by count of the total number of units.

(d) *Unpeeled whole canned pears.* The units may be insignificantly trimmed but none of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken, slightly trimmed, moderately trimmed, or any combination thereof; and not more than 5 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken, slightly trimmed, or moderately trimmed and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent and 5 percent by count: *Provided*, That in all containers comprising the sample such crushed, broken, slightly trimmed, and moderately trimmed units do not exceed an average of 10 percent by count of the total number of units and that such blemished units do not exceed an average of 5 percent by count of the total number of units.

(e) *Sliced canned pears.* Not more than an average of $\frac{1}{8}$ square inch of peel per 1 pound of net contents may be present; no stems nor loose cores may be present; not more than 10 percent by count of the units may be crushed or broken; and not more than 5 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent and 5 percent by count: *Provided*, That in all containers comprising the sample such crushed and broken units do not exceed an average of 10 percent by count of the total number of units and that such blemished units do not exceed an average of 5 percent by count of the total number of units.

(f) *Diced canned pears.* Not more than an average of $\frac{1}{8}$ square inch of peel per 1 pound of net contents may be present; no stems nor loose cores may be present; and not more than 5 percent by count of the units may be blemished.

(v) Halves, unpeeled halves, quarters, slices, diced, whole, or unpeeled whole canned pears that are reasonably free from defects and mixed pieces of irregular sizes and shapes of canned pears that are at least reasonably free from defects may be given a score of 24 to 26 points. Canned pears that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a limiting rule). Canned pears that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that the canned pears are reasonably free from any defects not specifically mentioned that affect the appearance or edibility of the product, and, in addition, has the following meanings with respect to the following styles of canned pears:

(a) *Halves; quarters canned pears.* Not more than an average of $\frac{1}{2}$ square

inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose or partially loose core per 3 pounds of net contents may be present; the units may be insignificantly trimmed or slightly trimmed, or both, but none of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken or moderately trimmed or any combination thereof; and not more than 10 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken or moderately trimmed and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent by count: *Provided*, That in all containers comprising the sample such crushed and broken and moderately trimmed units do not exceed an average of 10 percent by count of the total number of units and that such blemished units do not exceed an average of 10 percent by count of the total number of units.

(b) *Whole canned pears.* Not more than an average of $\frac{1}{2}$ square inch of peel per 1 pound of net contents may be present; the units may be insignificantly or slightly trimmed, or both, but none of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken or moderately trimmed or any combination thereof; and not more than 10 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken or moderately trimmed and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent by count: *Provided*, That in all containers comprising the sample such crushed and broken and moderately trimmed units do not exceed an average of 10 percent by count of the total number of units and that such blemished units do not exceed an average of 10 percent by count of the total number of units.

(c) *Unpeeled halves canned pears.* Not more than 1 stem or 1 loose or partially loose core per 3 pounds of net contents may be present; the units may be insignificantly trimmed or slightly trimmed, or both, but none of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken or moderately trimmed or any combination thereof; and not more than 10 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken or moderately trimmed and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent by count: *Provided*, That in all containers comprising the sample such crushed and broken and moderately trimmed units do not exceed an average of 10 percent by count of the total number of units and that such blemished units do not exceed an average of 10 percent by count of the total number of units.

(d) *Unpeeled whole canned pears.* The units may be insignificantly trimmed or slightly trimmed, or both,

but none of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken or moderately trimmed or any combination thereof; and not more than 10 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken or moderately trimmed and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent by count: *Provided*, That in all containers comprising the sample such crushed and broken and moderately trimmed units do not exceed an average of 10 percent by count of the total number of units and that such blemished units do not exceed an average of 10 percent by count of the total number of units.

(e) *Sliced canned pears.* Not more than an average of $\frac{1}{2}$ square inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose core per 3 pounds of net contents may be present; not more than 10 percent by count of the units may be crushed or broken; and not more than 10 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken and one unit in a single container is permitted to be blemished if any of such units exceed the respective allowances of 10 percent by count: *Provided*, That in all containers comprising the sample such crushed and broken units do not exceed an average of 10 percent by count of the total number of units and that such blemished units do not exceed an average of 10 percent by count of the total number of units.

(f) *Diced canned pears.* Not more than an average of $\frac{1}{2}$ square inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose core per 3 pounds of net contents may be present; and not more than 10 percent by count of the units may be blemished.

(g) *Mixed pieces of irregular sizes and shapes of canned pears.* Not more than an average of $\frac{1}{2}$ square inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose or partially loose core per 3 pounds of net contents may be present; and not more than 10 percent by count of the units may be blemished. One unit in a single container is permitted to be blemished if such unit exceeds the allowance of 10 percent by count: *Provided*, That in all containers comprising the sample such blemished units do not exceed an average of 10 percent by count of the total number of units.

(vi) Halves, unpeeled halves, or mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that are at least reasonably free from defects for canned "solid-pack" pears may be given a score of 24 to 26 points. Canned "solid-pack" pears that fall into this classification shall not be graded above U. S. Grade B Solid-pack or U. S. Choice Solid-pack, regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects for canned 'solid-pack' pears" means that the canned "solid-pack" pears are reasonably free from any defects not spe-

cifically mentioned that affect the appearance or edibility of the product, and, in addition, has the following meanings with respect to the following styles of canned "solid-pack" pears.

(a) *Halves; unpeeled halves; mixed pieces of irregular sizes and shapes of canned "solid-pack" pears.* Not more than an average of $\frac{1}{2}$ square inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose or partially loose core per 3 pounds of net contents may be present; and not more than 1 blemished unit per 1 pound of net contents may be present.

(vii) *Halves, unpeeled halves, quarters, slices, diced, whole, unpeeled whole, or mixed pieces of irregular sizes and shapes of canned pears that are fairly free from defects* may be given a score of 21 to 23 points. Canned pears that fall into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that the canned pears are fairly free from any defects not specifically mentioned that affect the appearance or edibility of the product, and, in addition, has the following meanings with respect to the following styles of canned pears:

(a) *Halves; quarters canned pears.* Not more than an average of 1 square inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose or partially loose core per 1 pound of net contents may be present; the units may be insignificantly trimmed, slightly trimmed, moderately trimmed, or any combination thereof, but not more than 10 percent by count of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken; and not more than 20 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken, one unit in a single container is permitted to be seriously trimmed, and one unit in a single container is permitted to be blemished, if any of such units exceed the respective allowances of 10 percent and 20 percent by count of the units: *Provided*, That in all containers comprising the sample such seriously trimmed units do not exceed an average of 10 percent by count of the total number of units and such blemished units do not exceed an average of 20 percent by count of the total number of units.

(b) *Whole canned pears.* Not more than an average of 1 square inch of peel per 1 pound of net contents may be present; the units may be insignificantly trimmed, slightly trimmed, moderately trimmed, or any combination thereof, but not more than 10 percent by count of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken; and not more than 20 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken, one unit in a single container is permitted to be seriously trimmed, and one unit in a single container is permitted to be blemished, if any of such units exceed the respective allowances of 10 percent and 20 percent

by count of the units: *Provided*, That in all containers comprising the sample such seriously trimmed units do not exceed an average of 10 percent by count of the total number of units and such blemished units do not exceed an average of 20 percent by count of the total number of units.

(c) *Unpeeled halves canned pears.* Not more than 1 stem or 1 loose or partially loose core per 1 pound of net contents may be present; the units may be insignificantly trimmed, slightly trimmed, moderately trimmed, or any combination thereof, but not more than 10 percent by count of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken; and not more than 20 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken, one unit in a single container is permitted to be seriously trimmed, and one unit in a single container is permitted to be blemished, if any of such units exceed the respective allowances of 10 percent and 20 percent by count of the units: *Provided*, That in all containers comprising the sample such seriously trimmed units do not exceed an average of 10 percent by count of the total number of units, and such blemished units do not exceed an average of 20 percent by count of the total number of units.

(d) *Unpeeled whole canned pears.* The units may be insignificantly trimmed, slightly trimmed, moderately trimmed, or any combination thereof, but not more than 10 percent by count of the units may be seriously trimmed; not more than 10 percent by count of the units may be crushed or broken; and not more than 20 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken, one unit in a single container is permitted to be seriously trimmed, and one unit in a single container is permitted to be blemished, if any of such units exceed the respective allowances of 10 percent and 20 percent by count of the units: *Provided*, That in all containers comprising the sample such seriously trimmed units do not exceed an average of 10 percent by count of the total number of units and such blemished units do not exceed an average of 20 percent by count of the total number of units.

(e) *Slices.* Not more than an average of 1 square inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose core per 1 pound of net contents may be present; not more than 10 percent by count of the units may be crushed or broken; and not more than 20 percent by count of the units may be blemished. One unit in a single container is permitted to be crushed or broken if such unit exceeds the allowance of 10 percent by count of the units.

(f) *Diced canned pears.* Not more than an average of 1 square inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose core per 1 pound of net contents may be present; and not more than 20 percent by count of the units may be blemished,

(g) *Mixed pieces of irregular sizes and shapes of canned pears.* Not more than an average of 1 square inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose or partially loose core per 1 pound of net contents may be present; and not more than 20 percent by count of the units may be blemished. One unit in a single container is permitted to be blemished if such unit exceeds the allowance of 20 percent by count: *Provided*, That in all containers comprising the sample such blemished units do not exceed an average of 20 percent by count of the total number of units.

(viii) *Halves, unpeeled halves, or mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that are fairly free from defects for canned "solid-pack" pears* may be given a score of 21 to 23 points. Canned "solid-pack" pears that fall into this classification shall not be graded above U. S. Grade C Solid-pack or U. S. Standard Solid-pack, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects for canned 'solid-pack' pears" means that the canned "solid-pack" pears are fairly free from any defects not specifically mentioned that affect the appearance or edibility of the product, and, in addition, has the following meanings with respect to the following styles of canned "solid-pack" pears:

(a) *Halves; unpeeled halves; mixed pieces of irregular sizes and shapes of canned "solid-pack" pears.* Not more than an average of 1 square inch of peel per 1 pound of net contents may be present; not more than 1 stem or 1 loose or partially loose core per 1 pound of net contents may be present; and not more than 2 blemished units per 1 pound of net contents may be present.

(ix) Canned pears or canned "solid-pack" pears which fail to meet subdivision (vii) or (viii) of this subparagraph may be given a score of 0 to 20 points and shall not be graded above the following stated grades, as applicable, regardless of the total score for the product (this is a limiting rule):

(a) Halves, quarters, whole canned pears shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

Not well peeled.
Partly crushed or broken.
Unevenly trimmed.
Blemished.

(b) Unpeeled halves, unpeeled whole canned pears shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

Partly crushed or broken.
Unevenly trimmed.
Blemished.

(c) Sliced, diced, mixed pieces of irregular sizes and shapes canned pears shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

Not well peeled.
Blemished.

(d) Canned "solid-pack" pears shall not be graded above Substandard Solid-pack.

(4) *Character.* The factor of character refers to the degree of ripeness, the texture, and tenderness of the product.

(i) Halves, unpeeled halves, quarters, slices, diced, whole, or unpeeled whole canned pears that possess a good character may be given a score of 27 to 30 points. "Good character" has the following meanings with respect to the various styles of canned pears:

(a) *Halves, unpeeled halves, quarters canned pears.* The units possess a texture typical of properly and uniformly ripened pears that are properly processed; the texture is fleshy and free from noticeable graininess or toughness; the units are tender; the units are uniformly intact and pliable but firm enough to possess well-defined edges with no visible breaking down of the flesh; and not more than 10 percent by count of the units may possess a reasonably good character. One unit in a container is permitted to have a reasonably good character if one unit exceeds the allowance of 10 percent by count: *Provided*, That in all containers comprising the sample, the units with reasonably good character do not exceed an average of 10 percent by count of the total number of units.

(b) *Whole, unpeeled whole canned pears.* The units possess a texture typical of properly and uniformly ripened pears that are properly processed; the texture is fleshy and free from noticeable graininess or toughness; the units are uniformly intact and firm with no visible breaking down of the flesh; and not more than 10 percent by count of the units may possess a reasonably good character. One unit in a container is permitted to have a reasonably good character if one unit exceeds the allowance of 10 percent by count: *Provided*, That in all containers comprising the sample the units with reasonably good character do not exceed an average of 10 percent by count of the total number of units.

(c) *Slices; diced canned pears.* The product generally possesses a texture typical of properly and uniformly ripened pears that are properly prepared and processed and not more than 10 percent by weight of the drained pears may be disintegrated or mushy.

(ii) Halves, unpeeled halves, quarters, slices, diced, whole, or unpeeled whole canned pears that possess a reasonably good character and mixed pieces of irregular sizes and shapes of canned pears that possess at least a reasonably good character may be given a score of 24 to 26 points. Canned pears that fall into this classification shall not be graded above U. S. Grade B or U. S. Choice, regardless of the total score for the product (this is a limiting rule). "Reasonably good character" has the following meanings with respect to the following styles of canned pears:

(a) *Halves, unpeeled halves, quarters, mixed pieces of irregular sizes and shapes of canned pears.* The units possess a texture typical of properly ripened pears that are properly processed; the units may possess a texture of moderate graininess; the units are reasonably tender or the tenderness may be variable within the unit; the units may be slightly

firm or slightly ragged with slightly frayed edges or slightly soft but are not mushy; and not more than 10 percent by count of the units may possess a fairly good character. One unit in a container is permitted to have a fairly good character if one unit exceeds the allowance of 10 percent by count: *Provided*, That in all containers comprising the sample the units with fairly good character do not exceed an average of 10 percent by count of the total number of units.

(b) *Whole, unpeeled whole canned pears.* The units possess a texture typical of properly ripened pears that are properly processed; the units may possess a texture of moderate graininess; the units are reasonably tender or the tenderness may be variable within the unit; the units may be slightly firm or slightly ragged or slightly soft but are not mushy; and not more than 10 percent by count of the units may possess a fairly good character. One unit in a container is permitted to have a fairly good character if one unit exceeds the allowance of 10 percent by count: *Provided*, That in all containers comprising the sample the units with fairly good character do not exceed an average of 10 percent by count of the total number of units.

(c) *Sliced, diced canned pears.* The product generally possesses a texture typical of properly ripened pears that are properly prepared and processed and not more than 15 percent by weight of the drained pears may be disintegrated or mushy.

(iii) Halves, unpeeled halves, or mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that possess at least a reasonably good character for canned "solid-pack" pears may be given a score of 24 to 26 points. Canned "solid-pack" pears that fall into this classification shall not be graded above U. S. Grade B Solid-pack or U. S. Choice Solid-pack, regardless of the total score for the product (this is a limiting rule). "Reasonably good character for canned 'solid-pack' pears" has the following meaning with respect to the styles of canned "solid-pack" pears:

(a) *Halves; unpeeled halves; mixed pieces of irregular sizes and shapes of canned "solid-pack" pears.* The product generally possesses a texture of properly ripened pears that are properly processed as "solid-pack" pears; the texture may be of moderate graininess or variable in tenderness or may be soft; not less than 80 percent by weight of the drained pears are in reasonably intact units and the balance may be mushy or consist of units with hard-calyx ends.

(iv) Halves, unpeeled halves, quarters, slices, diced, whole, unpeeled whole, or mixed pieces of irregular sizes and shapes of canned pears that possess a fairly good character may be given a score of 21 to 23 points. Canned pears that fall into this classification shall not be graded above U. S. Grade C or U. S. Standard, regardless of the total score for the product (this is a limiting rule). "Fairly good character" has the following meanings with respect to the following styles of canned pears:

(a) *Halves, unpeeled halves, quarters, mixed pieces of irregular sizes and shapes of canned pears.* The units possess a texture of properly processed pears which may be variable; the units may possess a texture of marked graininess; the units may be lacking uniformity of tenderness; the units may be markedly firm or markedly ragged with frayed edges or may be soft; and not more than 10 percent by weight of the drained pears may be mushy or consist of units with hard-calyx ends or units that are not tender.

(b) *Whole, unpeeled whole canned pears.* The units possess a texture of properly processed pears which may be variable; the units may possess a texture of marked graininess; the units may be lacking uniformity of tenderness; the units may be markedly firm or markedly ragged or soft; and not more than 10 percent by count of the units may be mushy or consist of units with hard-calyx ends or units that are not tender. One unit in a container is permitted to be mushy or possess hard-calyx ends or not tender: *Provided*, That in all containers comprising the sample, all of such units do not exceed an average of 10 percent by count of the total number of units.

(c) *Sliced; diced canned pears.* The product generally possesses a texture typical of properly prepared and processed pears and not more than 20 percent by weight of the drained pears may be disintegrated or mushy.

(v) Halves, unpeeled halves, or mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that possess a fairly good character may be given a score of 21 to 23 points. Canned "solid-pack" pears that fall into this classification shall not be graded above U. S. Grade C Solid-pack or U. S. Standard Solid-pack, regardless of the total score for the product (this is a limiting rule). "Fairly good character for canned 'solid-pack' pears" has the following meaning with respect to the styles of canned "solid-pack" pears:

(a) *Halves; unpeeled halves; mixed pieces of irregular sizes and shapes of canned "solid-pack" pears.* The product generally possesses a texture of properly processed pears which may be variable; the texture may be of marked graininess or variable in tenderness or may be soft; not less than 60 percent by weight of the drained pears are in reasonably intact units and the balance may be mushy or consist of units with hard-calyx ends.

(vi) Halves, unpeeled halves, quarters, slices, diced, whole, unpeeled whole, and mixed pieces of irregular sizes and shapes of canned pears that fail to meet the requirements of subdivision (iv) of this subparagraph or that are "not tender" may be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule). Halves, unpeeled halves, quarters, sliced, diced, whole, unpeeled whole, or mixed pieces of irregular sizes and shapes of canned pears that are "not tender" are also "Below Standard in Quality—Not Tender."

(vii) Halves, unpeeled halves, and mixed pieces of irregular sizes and shapes of canned "solid-pack" pears that fail to meet the requirements of subdivision (v) of this subparagraph may be given a score of 0 to 20 points and shall not be graded above Substandard Solid-pack, regardless of the total score for the product (this is a limiting rule).

(j) *Tolerances for certification of officially drawn samples.* (1) When certifying samples that have been officially drawn and which represent a specific lot of canned pears, the grade for such lot will be determined by averaging the total scores of the containers comprising the sample, if:

(i) Not more than one-sixth of such containers fails to meet all the requirements of the grade indicated by the average of such total scores, and, with respect to such containers which fail to meet the requirements of the indicated grade by reason of a limiting rule, the average score of all containers in the sample for the factor, subject to such limiting rule, is within the range for the grade indicated;

(ii) None of the containers comprising the sample falls more than 4 points below the minimum score for the grade indicated by the average of the total scores; and

(iii) All containers comprising the sample meet all applicable standards of quality promulgated under the Federal Food, Drug, and Cosmetic Act and in effect at the time of the aforesaid certification.

(k) *Score sheet for canned pears.*

Size and kind of container.....	.....
Container mark or identification.....	.....
Label.....	.....
Net weight (ounces).....	.....
Vacuum (inches).....	.....
Count.....	.....
Drained weight (ounces).....	.....
Solid-pack () Spiced ( ).....	.....
If in a liquid packing medium:	.....
Brix measurement.....	.....
Syrup designation (Extra heavy, heavy, etc.).....	.....
Style (Halves) (Quarters) (Whole ).....	.....

Factors		Score points
I. Color.....	20	(A) 18-20 (B) 16-17 (Mxd Pcs) & (B-SP) 16-17 (C) and (C-SP) 14-15 (SStd) & (SStd-SP) 0-13 (A) 18-20 (B) 16-17 (C) 14-15 (SStd) 0-13 (A) 27-30 (B) and (B-SP) 24-26 (C) and (C-SP) 21-23 (SStd) & (SStd-SP) 0-20
II. Uniformity of size and symmetry.....	20	(A) 27-30 (B) and (B-SP) 24-26 (C) and (C-SP) 21-23 (SStd) & (SStd-SP) 0-20
III. Absence of defects.....	30	(A) 27-30 (B) and (B-SP) 24-26 (C) and (C-SP) 21-23 (SStd) & (SStd-SP) 0-20
IV. Character.....	30	(A) 27-30 (B) and (B-SP) 24-26 (C) and (C-SP) 21-23 (SStd) & (SStd-SP) 0-20
Total score.....	100	
Normal flavor and odor.....		

¹ Indicates limiting rule.

(l) *Effective time and supersedure.* The revised United States Standards for Grades of Canned Pears (which is the fourth issue) contained in this section will become effective 15 days after the date of publication in the FEDERAL

REGISTER and thereupon will supersede the United States Standards for Grades of Canned Pears which have been in effect since April 15, 1942.

(Sec. 205, 60 Stat. 1090; 7 U. S. C. 1624. Interpret or applies sec. 203, 60 Stat. 1087; 7 U. S. C. 1622)

Issued at Washington, D. C., this 9th day of November, 1951.

[SEAL] ROY W. LENNARTSON,
Assistant Administrator, Pro-
duction and Marketing Ad-
ministration.

[F. R. Doc. 51-13711; Filed, Nov. 14, 1951;
8:55 a. m.]

Acreage classification	Stage of coverage to be used	Production to be counted
4. Acreage from which threshed wheat as determined by the Corporation (1) does not grade No. 3 or better in accordance with Official Grain Standards of the United States for Wheat because of the quality of the wheat and can not be made to grade No. 3 if properly handled and (2) has a value per bushel which is less than the lower of the fixed price or the Commodity Credit Corporation county loan rate for No. 3 wheat.	T H I R D	The number of bushels obtained by (1) multiplying the bushels of such threshed wheat by the value per bushel as determined by the Corporation, and (2) dividing the result thus obtained by the lower of the fixed price or the Commodity Credit Corporation county loan rate for No. 3 wheat.

(Secs. 506, 516, 52 Stat. 73, 77, as amended; 7 U. S. C. and Sup., 1506, 1516. Interpret or apply secs. 507-509, 52 Stat. 73-75, as amended; 7 U. S. C. and Sup., 1507-1509)

Adopted by the Board of Directors on Nov. 5, 1951.

[SEAL] R. J. POSSON,
Secretary,
Federal Crop Insurance Corporation.

Approved: November 8, 1951.

CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 51-13671; Filed, Nov. 14, 1951;
8:50 a. m.]

[Amdt. 1]

PART 419—COTTON CROP INSURANCE

SUBPART—REGULATIONS FOR THE 1952 AND SUCCEEDING CROP YEARS

The above-identified regulations (16 F. R. 7975) are hereby amended as follows:

Section 419.13 *The policy* is amended by changing paragraph (c) of section 12 to read as follows:

(c) Any premium note not paid at maturity shall bear interest computed not on a per annum basis but as follows: Three percent on the principal amount not paid on or before the interest date and an additional one percent on the principal amount unpaid at the end of each two calendar month period thereafter. December 31 of each year shall be the interest date for counties in Arizona, California and New Mexico and for Andrews, Martin, Howard, Mitchell, Scurry, Kent, Dickens, Motley, Hall, and Collingsworth Counties, Texas, and for all Texas counties lying north and west thereof. October 31 of each year shall be the interest date for all other counties.

(Secs. 506, 516, 52 Stat. 73, 77, as amended; 7 U. S. C. 1506, 1516. Interpret or apply secs. 507, 508, 509, 52 Stat. 73, 74, 75, as amended; 7 U. S. C. and Sup. 1507, 1508, 1509)

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

[Amdt. 1]

PART 418—WHEAT CROP INSURANCE

SUBPART—REGULATIONS FOR 1953 AND SUCCEEDING CROP YEARS

The above-identified regulations (16 F. R. 9628) are hereby amended as follows:

Section 418.160 *The policy* is amended to change item 4 of the "Production Schedule" contained in section 19 thereof to read as follows:

Stage of coverage to be used	Production to be counted
T H I R D	The number of bushels obtained by (1) multiplying the bushels of such threshed wheat by the value per bushel as determined by the Corporation, and (2) dividing the result thus obtained by the lower of the fixed price or the Commodity Credit Corporation county loan rate for No. 3 wheat.

Adopted by the Board of Directors on November 5, 1951.

[SEAL] R. J. POSSON,
Secretary,
Federal Crop Insurance Corporation.
Approved: November 8, 1951.

CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 51-13670; Filed, Nov. 14, 1951;
8:49 a. m.]

[Amdt. 4]

PART 419—COTTON CROP INSURANCE

SUBPART—REGULATIONS FOR THE 1951 AND SUCCEEDING CROP YEARS

The above-identified regulations, as amended (15 F. R. 6740, 9033; 16 F. R. 4171, 7695), are hereby amended as follows:

1. Section 419.14 *The commodity coverage policy* is amended by adding to paragraph (c) of section 12 the following sentence: "The interest date for 1951 is extended from October 31 to December 31 for counties in Arizona and New Mexico."

2. Section 419.15 *The monetary coverage policy* is amended by adding to paragraph (c) of section 12 the following sentence: "The interest date for 1951 is extended from October 31 to December 31 for Crosby, Floyd, Hale, Lamb, Lubbock and Lynn Counties, Texas."

(Secs. 506, 516, 52 Stat. 73, 77, as amended; 7 U. S. C. 1506, 1516. Interpret or apply secs. 507, 508, 509, 52 Stat. 73, 74, 75, as amended; 7 U. S. C. and Sup. 1507, 1508, 1509)

Adopted by the Board of Directors on November 5, 1951.

[SEAL] R. J. POSSON,
Secretary,
Federal Crop Insurance Corporation.
Approved: November 8, 1951.

CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 51-13672; Filed, Nov. 14, 1951;
8:50 a. m.]

PART 422—CITRUS CROP INSURANCE
SUBPART—REGULATIONS FOR ANNUAL
CONTRACTS FOR 1952 CROP YEAR

By virtue of the authority contained in the Federal Crop Insurance Act, as amended, these regulations are hereby published and prescribed to be in force and effect, with respect to citrus crop insurance contracts for the 1952 crop year, until amended or superseded by regulations hereafter made.

Sec.

- 422.21 Availability of citrus crop insurance.
- 422.22 Coverages per acre.
- 422.23 Premium.
- 422.24 Application for insurance.
- 422.25 The contract.
- 422.26 Reduction of premium based on good experience.
- 422.27 Public notice of indemnities paid.
- 422.28 Refund of excess premium payments.
- 422.29 Creditors.
- 422.30 Rounding of fractional units.
- 422.31 The policy.

AUTHORITY: §§422.21 to 422.31 issued under secs. 506, 516, 52 Stat. 73, 77, as amended; 7 U. S. C. 1506, 1516. Interpret or apply secs. 507, 508, 509, 52 Stat. 73-75; as amended; 7 U. S. C. 1507, 1508, 1509.

§ 422.21 *Availability of citrus crop insurance.* (a) Citrus crop insurance will be provided for experimental purposes in Polk County, Florida.

(b) Insurance will not be provided pursuant to applications for citrus insurance filed in a county unless written applications cover the minimum number of farms prescribed by the Federal Crop Insurance Act, as amended. For this purpose an insurance unit shall be counted as one farm.

§ 422.22 *Coverages per acre.* The Corporation shall establish coverages per acre which shall not (a) be in excess of the maximum limitations prescribed by the Federal Crop Insurance Act, as amended, or (b) apply to acreage having a potential production for the 1952 citrus crop of less than 100 standard field boxes per acre. The coverages established by the Corporation shall be shown on the county actuarial table which shall be on file in the county office.

§ 422.23 *Premium.* (a) The Corporation shall establish premium rates per acre by areas for all acreage for which coverages are established and such rates shall be those deemed adequate to cover claims for citrus crop losses and to provide a reasonable reserve against unforeseen losses. Premium rates so established shall be shown on the county actuarial table which shall be on file in the county office.

(b) The premium shall be paid on or before April 30, 1952, except that such date may be extended to August 31, 1952, upon the insured making arrangements satisfactory to the Corporation to insure payment of the premium.

§ 422.24 *Application for insurance.* Application for insurance on a Corporation form entitled "Application for Citrus Crop Insurance" may be made by any person to cover his interest as landlord, owner-operator, or tenant in a citrus crop. Applications shall be submitted to the county office on or before April 30, 1952.

§ 422.25 *The contract.* Upon acceptance of an application for insurance by the Corporation, the contract shall be in effect and shall consist of the application and the policy shown in § 422.31.

§ 422.26 *Reduction of premium based on good experience.* The insured's annual premium may be reduced 25 percent if he has had seven consecutively insured citrus crops (immediately preceding the current crop year) without a loss for which an indemnity was paid. As used in this section, "consecutively insured crops" means the citrus crops insured in consecutive years during which insurance was available. Failure to apply for insurance in any year when insurance is offered in the county in which the insured's grove is located shall break the insured's continuity of consecutively insured crops prior to such year, even though insurance may not be provided in the county during such year because of failure to meet the minimum participation requirement: *Provided, however,* That failure to apply for insurance for any year will not break the continuity of consecutively insured crops, if (a) the failure to apply for insurance was due to service in active military or naval service of the United States, or (b) the insured establishes, to the satisfaction of the Corporation, that failure to apply for insurance was due to the fact that he had no insurable interest in a citrus crop in that year. Nothing in this section shall create in the insured any right to a reduced premium.

§ 422.27 *Public notice of indemnities paid.* The Corporation shall provide for the posting annually in each county at the county courthouse of a list of indemnities paid for losses in such county.

§ 422.28 *Refund of excess premium payments.* Refund of any excess premium payment will be made only to the person who made such payment, except that where a person who is entitled to a refund of an excess premium payment has died, has been judicially declared incompetent, or has disappeared, the provisions of the policy with reference to the payment of indemnities in any such case shall be applicable with respect to the making of any such refund.

§ 422.29 *Creditors.* An interest in an insured citrus crop existing by virtue of a debt, lien, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle any holder of any such interest to any benefits under the contract.

§ 422.30 *Rounding of fractional units.* The premium and the total coverage shall be rounded to cents. Fractions of acres shall be rounded to tenths of acres. The percent of damage shall be rounded to tenths of a percent. Computations shall be carried one digit beyond the digit that is to be rounded. If the last digit is 1, 2, 3, or 4, the rounding shall be downward. If the last digit is 5, 6, 7, 8, or 9, the rounding shall be upward.

§ 422.31 *The policy.* The provisions of the citrus crop insurance policy for the 1952 crop year are as follows:

In consideration of the representations and provisions in the application upon which this policy is issued, which application is made a part of the contract, and subject to the terms and conditions set forth or referred to herein, the Federal Crop Insurance Corporation (hereinafter designated as the "Corporation") does hereby insure

(Name) _____ (Policy No.) _____
_____, Florida
(Address) _____ (County) _____
(hereinafter designated as the "insured")
against unavoidable loss on his 1952 citrus
crops due to freeze, hail, hurricane, or tor-
nado.

In witness whereof, the Corporation has
caused this policy to be issued this _____
day of _____, 1952.

FEDERAL CROP INSURANCE CORPORATION,

By _____
(State Crop Insurance Director)

TERMS AND CONDITIONS

1. *Kinds of citrus insured.* The kinds of citrus insured shall be all varieties of oranges, grapefruit, and tangerines.

2. *Insurable acreage.* Any acreage is insurable only if a coverage is shown therefor on the county actuarial table (including maps and related forms) on file in the county office. Acreage having a potential production for the 1952 citrus crop of less than 100 standard field boxes per acre is uninsurable.

3. *Responsibility of insured to report acreage and interest.* Each applicant shall specify on his application the number of insurable acres of citrus in the county in which he expects to have an interest as of May 1, 1952, and his expected interest in each such acreage. These data may be revised by the applicant on or before May 15, 1952, to show the actual insurable acreage of citrus in which he has an interest on May 1, 1952, and his interest therein. Unless so revised, the data on the application shall constitute the insured's report of his citrus acreage and his interest therein on May 1, 1952.

4. *Insured acreage.* The insured acreage with respect to each insurance unit shall be the insurable acreage of citrus in which the insured has an interest on May 1, 1952, as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect.

5. *Insured interest.* The insured interest in the citrus crops covered by the contract shall be the insured's interest on May 1, 1952, as reported by the insured or the interest which the Corporation determines as the insured's actual interest in the insurable citrus crops on this date, whichever the Corporation shall elect. For the purpose of determining the amount of any loss the insured interest shall not exceed the insured's actual interest at the time of damage.

6. *Coverage per acre.* The coverage per acre shall be the number of dollars established by the Corporation for the area in which the insured acreage is located, and is shown on the county actuarial table on file in the county office.

7. *Insurance period.* Insurance shall attach on May 1, 1952. Insurance shall cease with respect to any portion of a citrus crop covered by the contract upon harvest but in no event shall the insurance remain in effect after June 30, 1953, unless such time is extended in writing by the Corporation.

8. *Causes of loss not insured against.* The contract shall not cover loss caused by (a) failure to follow recognized good grove practices, (b) failure properly and without unreasonable delay to care for, harvest, salvage, or market the insured crops, (c) failure of a marketing agency or buyer to accept delivery of marketable fruit, (d) drought, (e) flood, (f) lightning, (g) fire, (h) excessive

rain, (l) wildlife, (j) insect infestation, (k) plant disease, (l) normal dropping of fruit, (m) neglect or malfeasance of the insured or of any person in his household or employment or connected with the grove as caretaker, tenant or wage hand, or (n) any cause of loss other than freeze, hail, hurricane, or tornado; nor shall it cover damage to blossoms.

9. *Notice of loss or damage.* (a) If a loss under the contract is probable, notice in writing (unless otherwise provided by the Corporation) shall be given the Corporation at the county office within 7 days after each material damage to the insured crop from an insured cause. Such notice shall state the cause and date of damage and probable percentage of damage.

(b) In the case of freeze or hail, if the extent of damage cannot be determined until after the damaged fruit is harvested, an additional notice in writing (unless otherwise provided by the Corporation), stating the date that harvest of the damaged fruit was completed for the insurance unit, shall be given the Corporation at the county office within 15 days of such date.

(c) If notice(s) is not given as required by this section, the Corporation reserves the right to reject any claim for indemnity.

10. *No abandonment.* There shall be no liability under the contract on any citrus crop or part thereof which is abandoned by the insured without a release by the Corporation. There shall be no abandonment of any crop or portion thereof to the Corporation.

11. *Proof of loss.* If a loss is claimed, the insured shall submit to the Corporation, on a Corporation form entitled "Statement in Proof of Loss for Citrus," such information regarding the manner and extent of the loss as may be required by the Corporation. This form containing such information shall be executed and submitted, for each loss claimed, within (a) ninety days after the time of damage in the case of hurricane or tornado or (b) sixty days after the completion of harvesting the damaged fruit in the case of freeze or hail, but in no event later than July 31, 1953, unless the time for submitting the claim is extended in writing by the Corporation. It shall be a condition precedent to any liability under the contract that the insured establish the amount of any loss for which claim is made, and that such loss has been directly caused by one or more of the hazards insured against during the insurance period, and that the insured further establish that no part of the loss has arisen from or been caused by, either directly or indirectly, any of the causes of loss not insured against by the contract.

12. *Insurance unit.* Losses shall be determined separately for each insurance unit except as provided in section 13 (e). An insurance unit consists of (a) all the insurable acreage of citrus in the county in which the insured has 100 percent interest on May 1, 1952, or (b) all such insurable acreage in the county in which two or more persons have 100 percent interest on May 1, 1952, excluding any other acreage of citrus in the county in which such persons do not have 100 percent interest on such date. Acreage shall be considered to be located in the county if a coverage is shown thereon on the county actuarial table.

13. *Amount of loss.* (a) The amount of loss with respect to any insurance unit shall be determined by multiplying the coverage for such unit by the average percent of damage for all citrus crops on such unit, except that no loss shall be payable if the average percent of damage for the unit during the insurance period is less than 10 percent.

(b) The amount of coverage with respect to any insurance unit shall be determined by multiplying the insured acreage of citrus

on such unit by the insured interest and the result by the coverage per acre.

(c) The average percent of damage for all citrus crops on any insurance unit shall be based upon the percent of damage to each kind of fruit on the unit and the insurable acreage in each such kind.

(d) The percent of damage for each kind of fruit on any insurance unit shall be the ratio of the number of standard field boxes of fruit lost from an insured cause(s) to the total number of standard field boxes of such kind of fruit which was or would have been produced, as determined by the Corporation. In the case of partial damage by freeze or hail, the number of standard field boxes of partially damaged fruit lost will be determined by the Corporation on the basis of 85 pounds per box for grapefruit, 90 pounds per box for oranges, and 95 pounds per box for tangerines. The number of boxes of each kind of fruit which was or would have been produced shall include (1) fruit picked before the insured damage occurs, (2) fruit remaining on the trees after the damage occurs, (3) fruit lost from the insured cause(s) of damage, and (4) any other fruit not included in items (1) through (3), including fruit lost from causes not insured against. Fruit lost shall include any fruit which is unmarketable as fruit or for juice due to an insured cause(s) and the destroyed portion (based on weight) of any fruit which is partially damaged by freeze or hail, as determined by the Corporation.

(e) If production from two or more insurance units, or from any insurance unit(s) and uninsured acreage, is commingled, and the insured fails to establish and maintain separate acreage and production records satisfactory to the Corporation, the Corporation may (i) allocate either the commingled production or the amount of loss or both between the acreage involved in any manner it deems appropriate or (ii) void the insurance on the insurance unit(s) involved and declare the premium for such unit(s) forfeited by the insured.

14. *Payment of indemnity.* (a) Indemnities shall be paid only by check. The amount of indemnity will be payable within thirty days after a satisfactory proof of loss is approved by the Corporation but if payment is delayed for any reason the Corporation shall not be liable for interest or damages on account of such delay.

(b) Indemnities shall be subject to all provisions of the contract, and the Corporation shall have the right to deduct from any indemnity the unpaid amount of any obligation of the insured to the Corporation.

(c) Any indemnity payable under the contract shall not be subject to attachment, levy, garnishment, or any other legal process before payment to the insured or such other person(s) as may be entitled thereto under the provisions of the contract.

(d) If a check issued in payment of an indemnity is returned undeliverable at the last known address of the payee, and if such payee or other person entitled to the indemnity makes no claim for payment within two years after the issuance of the check, such claim shall not thereafter be payable except with the consent of the Corporation.

15. *Payment to transferee.* If the insured transfers all or a part of his insured interest in a citrus crop before the end of the insurance period the transferee upon written request made by the transferor will be entitled to the benefits, and subject to the terms and conditions, of the contract accruing after the transfer with respect to the interest so transferred. Any transfer shall be subject to any collateral assignment made by the original insured in accordance with section 17. However, the Corporation shall not be liable for a greater amount of indemnity in connection with the insured crop than would have been paid if the transfer had not taken place.

16. *Death, incompetence or disappearance of insured.* (a) The contract and any assignment made to secure the premium thereon shall bind and apply to the benefit of the insured's heir(s), administrator, executor, guardian, or conservator.

(b) If the insured dies, is judicially declared incompetent or disappears any indemnity which is or becomes part of his estate shall be paid to the legal representative of the estate. Should no such representative be qualified, the Corporation may pay the indemnity to the person(s) it determines to be beneficially entitled thereto or to any one or more of such persons on behalf of all such persons or may withhold payment until a legal representative of the estate is qualified. In such case, and in any other case where an indemnity is claimed by a person(s) other than the original insured or diverse interests appear with respect to any insurance unit, the determination of the Corporation as to the existence or non-existence of a circumstance in the event of which payment may be made and of the person(s) to whom such payment shall be made shall be final and conclusive. Payment of an indemnity shall constitute a complete discharge of the Corporation's obligations with respect to the loss for which such indemnity is paid and shall be a bar to recovery by any other person(s).

17. *Collateral assignment.* The original insured may assign his right to an indemnity under the contract by executing a Corporation form entitled "Collateral Assignment" and upon approval thereof by the Corporation the interest of the assignee will be recognized and the assignee shall have the right to submit the loss notices and forms as required by the contract if the insured neglects or refuses to take such action.

18. *Records and access to grove.* For the purpose of enabling the Corporation to determine any loss that may have occurred under the contract, the insured shall keep, or cause to be kept, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all citrus produced on each insurance unit covered by the contract, and on any uninsured acreage in which he has an interest. As often as may be reasonably required, any person(s) designated by the Corporation shall have access to such records and the grove(s) for purposes related to the contract.

19. *Voidance of contract.* The Corporation may void the contract and declare the premium(s) forfeited without waiving any right or remedy, including the right to collect the amount of the premium, if (a) at any time, either before or after loss, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, or the subject thereof, or (b) the insured shall neglect to use all reasonable means to care for, save or salvage the citrus crop(s) whether before or after damage has occurred, or (c) the insured fails to give any notice, or otherwise fails to comply with the terms of the contract at the time and in the manner prescribed.

20. *Modification of contract.* No notice to any representative of the Corporation or knowledge possessed by any such representative or by any other person shall be held to effect a waiver of or change in any part of the contract, or to estop the Corporation from asserting any right or power under such contract, nor shall the terms of such contract be waived or changed except as authorized in writing by a duly authorized officer or representative of the Corporation; nor shall any provision or condition of the contract or any forfeiture be held to be waived by any delay or omission by the Corporation in exercising its rights and powers thereunder or by any requirement, act, or proceeding on the part of the Corporation.

or of its representatives relating to appraisal or to any examination herein provided for.

21. *General.* (a) In addition to the terms and provisions in the application and policy, the Citrus Crop Insurance Regulations for the 1952 crop year shall govern with respect to (1) minimum participation requirement, (2) closing date for filing applications for insurance, (3) refund of excess premium payments, (4) creditors, and (5) rounding of fractional units.

(b) Copies of the Citrus Crop Insurance Regulations for the 1952 crop year and the forms referred to in this policy are available at the county office.

22. *Meaning of terms.* For the purpose of the Citrus Crop Insurance Program, the term:

(a) "Contract" means the accepted application for insurance, this policy and any riders thereto.

(b) "County actuarial table" means the form and related material (including the crop insurance maps) approved by the Corporation for listing the coverage per acre and the premium rates per acre applicable in the county, and shall be on file in the county office.

(c) "County office" means the Production and Marketing Administration county office.

(d) "Crop year" means the period May 1, 1952 through June 30, 1953, and is referred to as the 1952 crop year.

(e) "Harvest" means (1) any severance of the fruit from the tree either by pulling or clipping or (2) picking the marketable fruit from the ground.

(f) "Person" means an individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(g) "1952 citrus crop(s)" means 1952-53 marketing season citrus fruit.

23. *Amount of premium.* (a) The premium rate per acre will be the applicable number of dollars established by the Corporation for the coverage and rate area in which the insured acreage is located and is shown on the county actuarial table on file in the county office. The premium for each insurance unit under the contract will be based upon (1) the insured acreage, (2) the applicable premium rate(s), and (3) the insured interest(s) in the citrus crop on May 1, 1952. The premium for the contract shall be the total of the premiums computed for all insurance units covered by the contract. The premium with respect to any insured acreage shall be regarded as earned on May 1, 1952.

(b) The insured's annual premium may be reduced 25 percent if he has had seven consecutively insured citrus crops (immediately preceding the current crop year) without a loss for which an indemnity was paid. Nothing in this paragraph shall create in the insured any right to a reduced premium.

NOTE: The record keeping requirements of these regulations have been approved by, and subsequent reporting requirements will be subject to the approval of, the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Adopted by the Board of Directors on November 5, 1951.

[SEAL] R. J. POSSON,
Secretary,
Federal Crop Insurance Corporation.

Approved: November 8, 1951.

CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 51-13673; Filed, Nov. 14, 1951;
8:50 a. m.]

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

PART 997—HANDLING OF FILBERTS GROWN IN OREGON AND WASHINGTON

CHANGES IN SALABLE, SURPLUS, AND WITHHOLDING PERCENTAGES

After consideration of a recent recommendation of the Filbert Control Board, the administrative agency for operations under the marketing agreement and order (7 CFR, Part 997) regulating the handling of filberts grown in Oregon and Washington, effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and other available information, it is hereby found and determined that the existing regulation (16 F. R. 9678) fixing the salable, surplus, and withholding percentages for filberts at 85 percent, 15 percent, and 18 percent, respectively, should be amended to provide for salable, surplus, and withholding percentages for said 1951-52 fiscal year at 100, 0, and 0 percent, respectively. Therefore, it is hereby ordered that § 997.201 be, as it is hereby amended, to read as follows:

§ 997.201 *Salable, surplus, and withholding percentages for merchantable in-shell filberts.* For the fiscal year beginning August 1, 1951, the salable percentage of merchantable in-shell filberts shall be 100 percent, the surplus percentage shall be 0 percent, and the withholding percentage shall be 0 percent.

It is hereby found and determined that it is impractical and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this document later than the date of its publication in the FEDERAL REGISTER. The original salable, surplus, and withholding percentages for merchantable filberts for the 1951-52 fiscal year, as set forth in the FEDERAL REGISTER issue (16 F. R. 9678) of September 22, 1951, were fixed on the basis of an estimate of merchantable filbert production for that fiscal year which is considerably in excess of the actual merchantable production indicated by the latest crop information. Such reduction is due primarily to unfavorable weather conditions which have arisen since the original estimate was

made. As a result of this situation, it now appears that the entire production of merchantable filberts for the 1951-52 fiscal year will be below that quantity required to meet the normal trade demand. This normal trade demand is of such character as to require that all of said merchantable filberts be made available to meet that demand as promptly as is practicable. Further, the effect of this action will be for the benefit of the persons affected thereby, in that it will serve to relieve them of existing restrictions. No preparation for this regulation will be necessary which cannot be completed prior to its effective date. Therefore, good cause exists for not giving preliminary notice, engaging in rule making procedure, and postponing the effective date of this document later than the date of its publication in the FEDERAL REGISTER (See section 4c of the Administrative Procedure Act; 5 U. S. C. 1001 et seq.)

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Issued at Washington, D. C., this 9th day of November 1951, to become effective upon publication of this document in the FEDERAL REGISTER.

[SEAL] S. R. SMITH,
Director,
Fruit and Vegetable Branch.

[F. R. Doc. 51-13713; Filed, Nov. 14, 1951;
8:56 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 2]

PART 608—DANGER AREAS

DANGER AREA ALTERATIONS

The danger area alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Airspace Subcommittee, and are adopted when indicated in order to promote safety of the flying public. Since a military function of the United States is involved, compliance with section 4 of the Administrative Procedure Act is not required. Part 608 is amended as follows:

1. In § 608.15, an Eads, Colorado, area is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
EADS (Denver Chart).	A circular area having a radius of 5 miles centered at lat. 38°27'00" N, long. 102°36'30" W.	Surface to 8,000 feet m. s. l.	Continuous...	Bureau of Standards.

2. In § 608.15, a Galatea, Colorado, area is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
GALATEA (Denver Chart).	A circular area having a radius of 5 miles centered at lat. 38°30'00" N, long. 103°00'45" W.	Surface to 8,200 feet m. s. l.	Continuous...	Bureau of Standards.

3. In § 608.15, a Karval, Colorado, area is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
KARVAL (Denver Chart).	A circular area having a radius of 5 miles centered at lat. 38°44'00" N, long. 103°31'30" W.	Surface to 9,000 feet m. s. l.	Continuous...	Bureau of Standards.

4. In § 608.15, a Kendrick, Colorado, area is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
KENDRICK (Denver Chart).	A circular area having a radius of 5 miles centered at lat. 38°43'30" N, long. 104°01'30" W.	Surface to 9,600 feet m. s. l.	Continuous...	Bureau of Standards.

5. In § 608.24, a Coldwater, Kansas, area is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
COLDWATER (Wichita Chart).	A circular area having a radius of 5 miles centered at lat. 37°27'30" N, long. 99°19'00" W.	Surface to 6,000 feet m. s. l.	Continuous...	Bureau of Standards.

6. In § 608.24, a Lake City, Kansas, area is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
LAKE CITY (Wichita Chart).	A circular area having a radius of 5 miles centered at lat. 37°21'30" N, long. 98°49'00" W.	Surface to 5,800 feet m. s. l.	Continuous...	Bureau of Standards.

7. In § 608.24, a Ulysses, Kansas, area is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
ULYSSES (Wichita Chart).	A circular area having a radius of 5 miles centered at lat. 37°42'30" N, long. 101°10'00" W.	Surface to 7,000 feet m. s. l.	Continuous...	Bureau of Standards.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interprets or applies sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

This amendment shall become effective on November 9, 1951.

[SEAL]

F. B. LEE,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 51-13716; Filed, Nov. 14, 1951; 8:59 a. m.]

TITLE 24—HOUSING AND HOUSING CREDIT

Chapter VIII—Office of Rent Stabilization, Economic Stabilization Agency

[Controlled Rooms in Rooming Houses and Other Establishments Rent Reg., Amdt. 416]

[Controlled Housing Rent Reg., Amdt. 421]

PART 825—RENT REGULATIONS UNDER THE HOUSING AND RENT ACT OF 1947, AS AMENDED
CALIFORNIA AND VIRGINIA

Amendment 421 to the Controlled Housing Rent Regulation (§§ 825.1 to 825.12) and Amendment 416 to the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments (§§ 825.81 to 825.92). Said regulations are amended in the following respect:

In Schedule A, Items 36 and 342c are added as follows:

State and name of defense-rental area	Class	County or counties in defense-rental areas under regulation	Maximum rent date	Effective date of regulation
California				
(36) Barstow.....	A	In San Bernardino County, the township of Barstow.	May 1, 1951	Nov. 15, 1951
Virginia				
(342c) Newport News-Hampton...	A	Independent cities of Hampton and Newport News; and the counties of Warwick, Elizabeth City, and York.	Apr. 1, 1951	Do.

These amendments are issued as a result of joint certifications pertaining to critical defense housing areas by the Secretary of Defense and the Director of Defense Mobilization under section 204 (1) of the Housing and Rent Act of 1947, as amended, and a determination as to the relaxation of real estate construction credit controls under section 204 (m) of said act.

(Sec. 204, 61 Stat. 197, as amended; 50 U. S. C. App. Sup. 1894)

These amendments shall be effective November 15, 1951.

Issued this 9th day of November 1951.

JOHN J. MADIGAN,
Acting Director of Rent Stabilization.

[F. R. Doc. 51-13699; Filed, Nov. 14, 1951; 8:53 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter A—Income and Excess Profits Taxes
[T. D. 5865; Regs. 130]

PART 40—EXCESS PROFITS TAXES; TAXABLE YEARS ENDING AFTER JUNE 30, 1950

MISCELLANEOUS AMENDMENTS

On August 16, 1951, notice of proposed rule making was published in the FEDERAL REGISTER (16 F. R. 8115), in order to conform Regulations 130 (26 CFR Part 40) to Part II of the Excess Profits Tax Act of 1950, approved January 3, 1951, which part, consisting of sections 461 through 465 of the Internal Revenue Code, is set forth in Regulations 130 immediately after § 40.458-8. After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the amendments to Regulations 130 (26 CFR Part 40) set forth below are hereby adopted.

PARAGRAPH 1. There is inserted immediately after section 461, the following:

§ 40.461-1 Purpose and scope of Part II. (a) The term "Part II" when used in the regulations in this part, means sections 461 through 465. Part II provides rules applicable to the use of the excess profits credit based on income and the method of computing such credit, in the case of "acquiring corporations" and of "component corporations". An acquiring corporation is a domestic corporation which has acquired property from a domestic corporation, partnership, or sole proprietorship in a transaction meeting the requirements set forth in section 461 (a), which transaction is sometimes referred to in the regulations in this part as a "Part II transaction". Each corporation, partnership, or sole proprietorship the properties of which are acquired by a corporation in a transaction described in section 461 (a) is designated a component corporation of the acquiring corporation. Furthermore, special rules are provided for the case in which an acquiring corporation later becomes a component corporation of another acquiring corporation. A foreign corporation cannot be an acquiring corporation and neither a foreign corporation, a foreign partnership, nor a foreign

sole proprietorship can be a component corporation.

(b) Part II provides the rules for determining the base period experience and the capital changes of the transferee corporation by reference to the income experience and the capital changes of the transferor. For certain purposes, Part II treats an acquiring corporation which was not actually in existence for part or all of its base period as having been in existence and having had taxable years for the period during which its component corporation was actually in existence. Special rules are provided for applying section 435 (e), 442, 443, 444, 445 or 446. Part II is also applicable to component corporations.

(c) Every corporation which is a party to a Part II transaction, whether as an acquiring corporation or as a component corporation, must compute its excess profits credit based on income under the provisions of Part II. However, in certain cases specifically set forth in section 462 (b) and (c), the average base period net income of an acquiring corporation determined under the general average method of section 435 (d) or under the growth alternative of section 435 (e), may be determined under Part II either with or without reference to the recomputation of excess profits net income under Part II, depending upon whichever determination produces the lesser excess profits tax. No similar alternative is available in the case of a component corporation or in the case of an acquiring corporation computing its average base period net income under an alternative method provided in section 442, 443, 444, 445, or 446. In any case in which the determination of the average base period net income of the acquiring corporation is made without reference to the recomputation of excess profits net income under Part II, the base period capital addition and the net capital addition or reduction of the acquiring corporation shall not be adjusted under Part II.

§ 40.461-2 Acquiring corporations.

(a) The types of transactions whereby a corporation becomes an acquiring corporation are specified in section 461 (a). In addition to statutory mergers and consolidations and the acquisition of property in a complete liquidation in which gain or loss is not recognized because of the provisions of section 112 (b) (6), only the following types of transactions are included:

(1) Under section 461 (a) (1) (A), the acquisition by one corporation, in exchange in whole or in part for all of its stock (except qualifying shares) of all classes, of substantially all the properties of another corporation. See section 112 (g) (1) (D).

(2) Under section 461 (a) (1) (B), the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of substantially all the properties of another corporation; but, in determining whether the exchange is solely for voting stock, the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded. See section 112 (g) (1) (C).

(3) Under section 461 (a) (1) (C), the acquisition before December 1, 1950, by one corporation of properties of another corporation solely as paid-in surplus or as a contribution to capital in respect of voting stock of the acquiring corporation owned by the transferor corporation; but, in determining whether the acquisition is solely as paid-in surplus or as a contribution to capital, the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded. In this type of transaction the transferor corporation must be forthwith completely liquidated pursuant to the plan under which the transfer of properties was made and the transaction of which the transfer is a part must have the effect of a statutory merger or consolidation.

(4) Under section 461 (a) (1) (D), the acquisition of substantially all the properties of a partnership in an exchange to which section 112 (b) (5), or so much of section 112 (c) or (e) as refers to section 112 (b) (5), is applicable. For the purpose of this paragraph, each business owned by a sole proprietorship shall be considered as owned by a separate partnership. For this purpose, the term "business" means a going business unit for which adequate and separate records were maintained.

(5) Under section 461 (a) (1) (E), the acquisition of a part, as distinguished from all or substantially all, of the properties of a corporation (other than a corporation exempt under section 101) or of a partnership in an exchange, not otherwise described in this section or section 461 (a), to which section 112 (b) (4) or 112 (b) (5), or so much of section 112 (c) or (e) as refers to section 112 (b) (4) or 112 (b) (5), is applicable. Types of transactions under section 461 (a) (1) (E) include: (i) The transfer by the component corporation of a part of its properties to an acquiring corporation and the retention of the remaining part by the component corporation; (ii) The transfer of all or substantially all of the properties of a component corporation to two or more separate acquiring corporations; and (iii) The transfer of part of the properties to two or more separate acquiring corporations and the retention of the remaining part by the component corporation. A transaction which qualifies as a Part II transaction without regard to section 461 (a) (1) (E), is not a transaction described in section 461 (a) (1) (E) for the purpose of any special rule under Part II pertaining to transactions described in section 461 (a) (1) (E).

(b) The types of transactions set forth in section 461 (a), other than those set forth in section 461 (a) (1) (C), either are embraced within the definition of a reorganization contained in section 112 (g) (1), are transfers to a controlled corporation within the meaning of section 112 (b) (5) and related sections, or are complete liquidations within the meaning of section 112 (b) (6). Since Part II applies only to cases where there is a sufficient continuity of interest to justify treating a corporation which has acquired the assets of another corporation, a partnership, or a business owned

by a sole proprietorship, as standing in the place of its predecessor, such transactions must satisfy all the requirements of the regulations prescribed under section 112 with respect to such transactions in order that the transferee corporation may be treated as an acquiring corporation. The fact that the property transferred consists solely of cash will not prevent the transaction from qualifying as a transfer to which section 112 (b) (5) is applicable.

§ 40.461-3 Component corporations—

(a) *In general.*—(1) Section 461 (c) (1). If a corporation is a component corporation in a transaction described in section 461 (a) (other than a transaction described in section 461 (a) (1) (E)), its base period experience for the period before the day after such transaction is made available to the acquiring corporation in such transaction or to an acquiring corporation of which the first acquiring corporation is a component corporation. If such component corporation remains in existence, it will not (after the transaction) receive any benefit from its experience on the day of and prior to such transaction, nor can its experience on the day of and prior to such transaction be made available to another acquiring corporation in a subsequent Part II transaction involving such component corporation, regardless of whether the first acquiring corporation actually utilizes such experience. However, the base period experience of the component corporation occurring after such first transaction may be available to another acquiring corporation in a subsequent Part II transaction involving such component corporation. The same rules are applicable to the capital changes of the component corporation. These rules are applicable to each successive Part II transaction described in section 461 (a) (other than a transaction described in section 461 (a) (1) (E)). Section 461 (c) (1) applies to all such types of Part II transactions, whether or not complete liquidation of the component corporation is specifically required in connection therewith.

(2) Section 461 (c) (3). If a corporation is a component corporation in a transaction described in section 461 (a) (1) (E), its base period experience for the period before the day after such transaction, to the extent allocable to the properties transferred, is made available to the acquiring corporation in such transaction or to an acquiring corporation of which the first acquiring corporation is a component corporation. If the component corporation remains in existence, it will not (after the transaction) receive any benefit from that portion of its base period experience which is made available to the acquiring corporation, regardless of whether the acquiring corporation actually utilizes such experience. Furthermore, only that part of the experience which is not made available to the acquiring corporation may be available to another acquiring corporation in a subsequent Part II transaction involving such component corporation. However, any part of the base period experience of the component corporation occurring after such first transaction

may be available to another acquiring corporation in a subsequent Part II transaction involving such component corporation. The same rules are applicable to each successive Part II transaction described in section 461 (a) (1) (E).

(b) *Rules for application of section 461 (c).* (1) For taxable years of the component corporation beginning after the Part II transaction (unless such transaction is described in section 461 (a) (1) (E), in which case see subparagraphs (3) and (4) of this paragraph), the excess profits credit based on income of the component corporation shall be determined without regard to its base period experience for the period ending with the day of the Part II transaction and without regard to the capital changes of the component corporation occurring before such transaction. Thus, in such cases, any computations which section 435 (f), relating to the base period capital addition, requires to be made as of a time preceding the transaction shall, instead, be made as of the time immediately after the transaction. Similarly, in computing the net capital addition or reduction, if the transaction occurs after the beginning of the first taxable year ending after June 30, 1950, the computations which section 435 (g) requires to be made as of the first day of such taxable year shall, instead, be made as of the time immediately after the transaction.

(2) For the taxable year of the component corporation in which occurs the Part II transaction (other than a transaction described in section 461 (a) (1) (E), in which case, see subparagraphs (3) and (4) of this paragraph), if such taxable year ends after June 30, 1950, and if the component corporation does not terminate its existence in such transaction, the average base period net income and the base period capital addition of the component corporation shall be limited to amounts which are the same portions of its average base period net income and its base period capital addition, respectively, as the number of days in such taxable year before the day after such transaction is of the total number of days in such taxable year. The net capital addition or reduction, as the case may be, for such taxable year shall be the sum of the following amounts (or the difference between such amounts if one amount is a net capital addition and the other amount is a net capital reduction):

- (i) An amount which bears the same ratio to the net capital addition or reduction computed as if the taxable year ended on the day of the transaction as the number of days in the portion of the taxable year ending with the day of the transaction bears to the total number of days in the taxable year, and
- (ii) An amount which bears the same ratio to the net capital addition or reduction computed under subparagraph (1) of this paragraph as if the taxable year began on the day after such transaction as the number of days in the taxable year after the day of the transaction bears to the total number of days in the taxable year.

If the component corporation is, by reason of the transaction, entitled to apply section 445, it may include in its excess profits credit a portion (determined on the basis of the number of days in the taxable year after the transaction) of the excess profits credit determined by the application of section 445. See § 40.461-4 (b) for the rules applicable in any such case. If the component corporation goes out of existence on the day of such Part II transaction with the result that its taxable year ends on the day of such transaction, the component corporation for the purpose of computing its excess profits credit for such year is not required to prorate its average base period net income or its base period capital addition and is not required to recompute its net capital addition or reduction. (For a corresponding provision in the case of the acquiring corporation and for an illustration of the application of such corresponding provision and of section 461 (c) (2), see section 462 (j) (2) and § 40.462-11.)

(3) For taxable years of the component corporation beginning after a Part II transaction described in section 461 (a) (1) (E) (that is, a transaction involving a transfer of only a part, as distinguished from a transfer of all or substantially all, of the properties of the component corporation), the excess profits credit based on income of the component corporation shall be determined without regard to that portion of its base period experience for the period ending with the day of the Part II transaction which is allocable to the acquiring corporation, and without regard to that portion of the capital changes of the component corporation occurring before such transaction which is allocable to the acquiring corporation. See § 40.461-7 for the method of applying this rule.

(4) For the taxable year of the component corporation in which occurs a Part II transaction described in section 461 (a) (1) (E) (that is, a transfer by the component corporation of only a part, as distinguished from all or substantially all, of its properties), if such taxable year ends after June 30, 1950, the average base period net income of the component corporation shall be limited to the sum of (i) an amount which is the same portion of its average base period net income as the number of days in such taxable year before the day after such transaction is of the total number of days in such taxable year, and (ii) an amount which is the same portion of its average base period net income allocable to it after the application of subparagraph (3) of this paragraph, as the number of days in such taxable year after the day of such transaction is of the total number of days in such taxable year. A similar rule applies with respect to the base period capital addition of the component corporation. The net capital addition or reduction, as the case may be, for such taxable year shall be the sum of the following amounts (or the difference between such amounts if one amount is a net capital addition and the other amount is a net capital reduction):

(i) An amount which bears the same ratio to the net capital addition or reduction computed as if the taxable year ended on the day of the transaction as the number of days in the portion of the taxable year ending with the day of the transaction bears to the total number of days in the taxable year, and

(ii) An amount which bears the same ratio to the net capital addition or reduction computed under subparagraph (3) of this paragraph as if the taxable year began on the day after such transaction as the number of days in the taxable year after the day of the transaction bears to the total number of days in the taxable year.

(5) Section 461 (c) provides that the acquiring corporation shall not take into account, for the purpose of determining its average base period net income, the base period experience of the component corporation for any period beginning with the day after the Part II transaction.

(c) *Proration of excess profits net income.* If the Part II transaction, except a transaction described in section 461 (a) (1) (E), occurred in a taxable year of the component corporation beginning with or within its base period, the excess profits net income of such component corporation for the portion of the taxable year after the transaction and for the prior portion of the taxable year (which prior portion is to be taken into account only by the acquiring corporation in such transaction) shall be computed on the basis of its income as shown by its books if the accounts are so kept that excess profits net income for each of such portions can be clearly and accurately determined. If the accounts are not so kept, the excess profits net income for the portion of the taxable year after the transaction shall be considered to be an amount which bears the same ratio to the excess profits net income for such taxable year as the number of days in such taxable year after such transaction bears to the total number of days in such taxable year, and the excess profits net income for the prior portion of such taxable year shall be considered to be the balance of the excess profits net income for such taxable year. However, if items of income and deduction are clearly and accurately determined to be attributable to particular portions of the taxable year, such items may be eliminated before the above proration is made, and after the proration is made such items will be added to (if items of income) or deducted from (if deductible items) the excess profits net income determined by the proration for the period to which such items are attributable.

(d) *Example of application of section 461 (c) (1) and (2).* The application of the provisions of section 461 (c) (1) and (2) may be illustrated by the following example:

Example. The A Corporation, the B Corporation, and the C Corporation, which corporations make their income tax returns on the calendar year basis, commenced business before January 1, 1946. On December 31, 1947, the B Corporation acquired the properties of the A Corporation in a transaction described in section 461 (a) (1) (A). The

A Corporation subsequently converted into new properties the stock of the B Corporation which it received in such transaction. It operated such new properties until October 19, 1951, when they were transferred to the C Corporation in a transaction described in section 461 (a) (1) (A). The A Corporation continued in business throughout 1951 and 1952, operating properties which it purchased with the proceeds of the conversion of the stock received in the second transaction. The operation of section 461 (c) (1) and (2) is as follows:

(1) As to the B Corporation. In determining its average base period net income under Part II for the purpose of the excess profits tax for 1950 and later excess profits tax taxable years, the B Corporation takes into account the A Corporation's base period experience for 1946 and 1947. Inasmuch as the transaction involving the B Corporation occurred prior to 1948, there is no base period capital addition of the A Corporation that could be transferred to the B Corporation. See section 464 and § 40.464-1.

(2) As to the A Corporation. In determining its average base period net income for the purpose of its excess profits tax for 1950, the A Corporation takes into account its base period experience for 1948 and 1949, but cannot use its base period experience for 1946 and 1947. The A Corporation takes into account, for the purpose of computing its excess profits credit for 1951, only four-fifths (the ratio of the number of days in the period January 1, 1951 to October 19, 1951, inclusive (292) over the number of days in 1951 (365)) of its average base period net income determined without regard to its base period experience for 1946 and 1947. The A Corporation also takes into account for such purpose for 1951 only four-fifths of its base period capital addition. See paragraph (b) (2) of this section for the computation of the net capital addition or reduction for 1951. However, such corporation may be entitled to compute its average base period net income under section 445 as a new corporation, since for the purpose of that section a corporation that transfers substantially all of its properties in a Part II transaction is deemed not to have commenced business until after the day of such transaction. See section 461 (d). Assuming that the A Corporation may qualify under section 445 as a new corporation with respect to both Part II transactions (the one on December 31, 1947, and the one on October 19, 1951) it will compute its excess profits credit for 1951 by taking into account four-fifths of its excess profits credit determined by applying section 445 as if it commenced business on the day after the first Part II transaction (and ended its taxable year on October 19, 1951), and one-fifth of its excess profits credit determined by applying section 445 as if it commenced business on the day after the second Part II transaction (and as if its taxable year began on October 20, 1951). See § 40.461-4 (b). The A Corporation will be entitled to use the credit based on invested capital if such credit results in less tax. The A Corporation determines its excess profits credit for 1952, without regard to its base period experience, its base period capital addition, if any, and its net capital additions or reductions prior to the transaction on October 19, 1951. Thus, for the purpose of section 435 (g) (3) (B), its equity capital at the beginning of January 1, 1952, is compared with its equity capital at the beginning of October 20, 1951.

(3) As to the C Corporation. Section 461 (c) first affects the C Corporation with respect to 1951. In determining its average base period net income under Part II for the purpose of its excess profits tax for that year, the C Corporation takes into account one-fifth of the A Corporation's base period experience for 1948 and 1949 and one-fifth of its base period capital addition. See section 462 (j) (2) and § 40.462-11. In determining

the C Corporation's average base period net income under Part II for the purpose of its excess profits tax for 1952, the C Corporation takes into account all of the A Corporation's base period experience for 1948 and 1949. Since the C Corporation commenced business before January 1, 1946, it may not use any average base period net income of the A Corporation determined under section 445 by reference to the first Part II transaction, except to the extent that such average base period net income may be available to the C Corporation under §§ 40.462-3 (c) and 40.462-11. For computations by the C Corporation involving the A Corporation's capital additions and reductions, see section 463, § 40.463-1, section 464, and § 40.464-1.

(c) *Example of application of section 461 (c) (3) and (4).* The application of the provisions of section 461 (c) (3) and (4) may be illustrated by the following example:

Example. The A Corporation and the B Corporation, which corporations make their income tax returns on the calendar year basis, commenced business before January 1, 1946. On December 31, 1947, the B Corporation acquired part of the properties of the A Corporation in a transaction described in section 461 (a) (1) (E). The A Corporation subsequently converted into new properties the stock in the B Corporation which it received in such transaction. It operated such new properties, together with the retained part of its old properties, until October 19, 1951, when, in a transaction described in section 461 (a) (1) (E), it transferred part of its properties to the C Corporation, a corporation created incident to the transaction. The A Corporation continued in business throughout 1951 and 1952. The operation of section 461 (3) and (4) is as follows:

(1) As to the B Corporation. In determining its average base period net income under Part II for the purpose of the excess profits tax for 1950 and later excess profits tax taxable years, the B Corporation takes into account that portion of the A Corporation's base period experience for 1946 and 1947 which is allocable under section 462 (i) and § 40.462-9 to the properties which the A Corporation transferred to the B Corporation. Inasmuch as the transaction involving the B Corporation occurred prior to 1948, there is no base period capital addition of the A Corporation that could be transferred to the B Corporation. See section 464 and § 40.464-1.

(2) As to the A Corporation. In determining its average base period net income for the purpose of its excess profits tax for 1950, it takes into account its entire base period experience for 1948 and 1949, and that portion of its base period experience for 1946 and 1947 which is allocable under section 462 (i) and § 40.462-9 to the properties retained by the A Corporation. Inasmuch as the transaction involving the B Corporation occurred prior to 1948, the base period capital addition of the A Corporation is not affected by the transaction. The A Corporation takes into account, for the purpose of computing its excess profits credit for 1951, the sum of the following: (i) An amount which is four-fifths (the ratio of the number of days in the period January 1, 1951, to October 19, 1951, inclusive (292), over the number of days in 1951 (365)) of its average base period net income determined without regard to that portion of its base period experience for 1946 and 1947 which is allocable to the B Corporation, and (ii) an amount which is one-fifth of that portion of its average base period net income so determined under (i) as is allocable under section 462 (i) and § 40.462-9 to the properties retained by the A Corporation. A similar determination is made with respect to the base period capital addition of the A Corporation. See

paragraph (b) (4) of this section for the computation of the net capital addition or reduction for 1951. The A Corporation will be entitled to use the credit based on invested capital if such credit results in less tax. The A Corporation determines its excess profits credit for 1952 without regard to those portions of its base period experience, its base period capital addition, if any, and its capital additions and reductions prior to the transaction on October 19, 1951, as are allocable to the B Corporation or to the C Corporation. Thus, for the purpose of section 435 (g) (3) (B), proper adjustment shall be made in determining the excess of equity capital at the beginning of January 1, 1952, over equity capital at the beginning of January 1, 1950.

(3) As to the C Corporation. Section 461 (c) first affects the C Corporation with respect to 1951. In determining its average base period net income under Part II for the purpose of its excess profits tax for that year, the C Corporation takes into account that portion of the A Corporation's base period experience for 1946 and 1947 which is allocable under section 462 (i) and § 40.462-9 to those properties of the A Corporation which were not transferred to the B Corporation, and which is allocable to the properties of the A Corporation transferred to the C Corporation, and that portion of the A Corporation's base period experience for 1948 and 1949 which is allocable under section 462 (i) and § 40.462-9 to the properties of the A Corporation transferred to the C Corporation. See section 462 (j) (2) and § 40.462-11 for the rules applicable if the taxable year of the C Corporation began prior to October 19, 1951, the date of the Part II transaction. The C Corporation's average base period net income under Part II for the purpose of its excess profits tax for 1952, is similarly determined except that section 462 (j) (2) and § 40.462-11 are not applicable. The C Corporation is not eligible to compute its average base period net income under section 445. See sections 445 (g), 462 (g), and § 40.462-7. For computations by the C Corporation involving the A Corporation's capital additions and reductions, see section 463, § 40.463-1, section 464, and § 40.464-1.

§ 40.461-4 *Existence of acquiring and component corporations.* (a) An acquiring corporation is considered, for certain purposes, to have been in existence and to have had taxable years for any period during which it or any of its component corporations was in existence and to have commenced business on the earliest date on which it or any of its component corporations commenced business. Except as otherwise expressly provided in section 462, the above rule applies for the purpose of section 435 (e) (alternative based on growth), section 442 (abnormalities during base period), section 443 (change in products or services), section 444 (increase in capacity for production or operation), section 445 (new corporations), and section 446 (depressed industry subgroups). Thus, if the component corporation (but not the acquiring corporation) was in existence and commenced business before the first day of the base period of the acquiring corporation, the acquiring corporation will be considered to have been in existence and to have commenced business prior to such first day, and section 435 (e), 442, 443, 444, or 446, but not section 445, may (subject to the rules of section 462) be applicable to the acquiring corporation. In the case of an acquiring corporation which becomes a component corporation of another acquiring corpo-

ration, effect is given to the constructive existence of the first acquiring corporation in determining the constructive existence of the second acquiring corporation. During the period of constructive existence, the taxable years of the acquiring corporation will be determined on the basis of the annual accounting period established for its first taxable year of actual existence.

(b) Except for the purpose of paragraph (a) of this section a component corporation in a Part II transaction, other than a transaction described in section 461 (a) (1) (E), shall be deemed not to have been in existence or to have commenced business prior to the day after such Part II transaction in determining the applicability to such corporation after such transaction of section 435 (e), 442, 443, 444, 445, or 446. Under this rule, a component corporation which transferred substantially all of its properties in a Part II transaction occurring during or after its base period may qualify for the benefits of section 445 as a new corporation. If the taxpayer was a component corporation in two or more Part II transactions (other than transactions of a type described in section 461 (a) (1) (E)) occurring prior to the taxable year for which the excess profits credit is computed, then for the purpose of determining the applicability of section 435 (e), 442, 443, 444, 445, or 446, the component corporation shall be deemed not to have been in existence nor to have commenced business prior to the day after the last such Part II transaction. If the Part II transaction occurs during a taxable year ending after June 30, 1950, and if the component corporation is entitled to apply section 445 as if it began existence and commenced business on the day after such transaction, the excess profits credit of the component corporation for such taxable year (if determined with such application of section 445) shall be the sum of the following amounts of excess profits credit, each such amount being first reduced to an amount which is such portion thereof as the number of days in the period for which such credit is computed is of the number of days in the taxable year in which the transaction occurred:

(1) The excess profits credit determined as if the portion of the taxable year ending on the date of such transaction were a taxable year, and determined without regard to such application of section 445 (but with regard to any similar application of section 445 in respect to a previous Part II transaction); and

(2) The excess profits credit determined with such application of section 445 as if the portion of the taxable year after the day of the transaction were a taxable year.

§ 40.461-5 *Partnerships and sole proprietorships under Part II.* A partnership (or a business owned by a sole proprietorship) can be a component corporation in certain types of Part II transactions. A partnership may be a component corporation only in a section 461 (a) (1) (D) or (E) type transaction. See section 461 (b) (5) and (6) and

§ 40.461-2 (a) (4) and (5). A business owned by a sole proprietorship can be a component corporation only in a section 461 (a) (1) (D) type transaction. See section 461 (f). A partnership (or a business owned by a sole proprietorship) cannot be an acquiring corporation and, therefore, the base period experience of any predecessor of a partnership (or a business owned by a sole proprietorship) is not made available to the acquiring corporation of which such partnership (or such business) is a component corporation.

§ 40.461-6 *Component corporation which was an acquiring corporation in a previous transaction.* Section 40.462-1 (a) provides the method by which an acquiring corporation, in a transaction described in Part II, determines its average base period net income under section 435 (c) for the purpose of the excess profits credit based on income. In the event that such an acquiring corporation becomes a component corporation in a subsequent Part II transaction, the rules set forth in section 462 (a) and in § 40.462-1 (a) are subject to the provisions of section 461 (e) which section provides that, for the purpose of such subsequent Part II transaction—

(a) If the subsequent Part II transaction occurs prior to the close of the base period of the acquiring corporation in such transaction, the base period experience of the component corporation in such transaction is to be determined after the application of Part II with respect to the previous transaction;

(b) If the subsequent Part II transaction occurs after the close of the base period of the acquiring corporation in such transaction,

(1) The average base period net income of the component corporation in such transaction is to be determined under section 435 (d), section 435 (e), or section 442 (c), with the application to the previous transaction of section 462 (b) and of section 462 (c) or (d) (where applicable), and

(2) The average base period net income of the component corporation in such transaction is to be determined under section 442 (d), section 443, section 444, section 445, or section 446, with the application to the previous transaction of section 462 (d), (e), (f), (g), or (h) (where applicable).

For rules relating to the constructive existence of such component corporation in certain cases, see § 40.461-4. For the purpose of the regulations under Part II, where a corporation created incident to a previous Part II transaction is a party to a subsequent Part II transaction, such corporation shall, with respect to the subsequent transaction, be treated in the same manner as if its actual existence corresponded to that of its most recently organized component corporation.

§ 40.461-7 *Provisions generally applicable under Part II—(a) Definition of "base period experience".* As used in the regulations under Part II, the term "base period experience" refers to the excess profits net income, to the average base period net income if computed under section 442, 443, 444, 445, or 446, and to any factor entering into the

determination of an average base period net income.

(b) *Application of Part II in certain types of transactions described in section 461 (a) (1) (E).* In the case of a Part II transaction described in section 461 (a) (1) (E) which involves—

(1) A transfer by a component corporation to an acquiring corporation which was not created incident to the transaction, or

(2) A transfer to an acquiring corporation, whether or not the acquiring corporation was created incident to the transaction, of properties by more than one component corporation, where one or more of such component corporations transferred less than substantially all of its properties, the acquiring corporation shall compute its excess profits credit under Part II as though each component corporation in any such transaction which transferred less than substantially all of its properties had transferred those properties to a corporation created incident to the transaction in a transaction described in section 461 (a) (1) (E) and such corporation had immediately thereafter transferred all of such properties to the acquiring corporation in a Part II transaction other than a transaction described in section 461 (a) (1) (E). See section 461 (e), relating to component corporations which were acquiring corporations in a previous Part II transaction.

(c) *Excess profits credit of component corporations in Part II transactions described in section 461 (a) (1) (E)—(1) In general.* The excess profits credit of a component corporation in a transaction described in section 461 (a) (1) (E) shall be determined under Part II, for taxable years beginning after the day of such transaction (and, to the extent provided in § 40.461-3 (b) (4) for the taxable year in which such transaction occurs) in the same manner as though (in such transaction) such component corporation were an acquiring corporation in a transaction described in section 461 (a) (1) (E), and as though it had received in that transaction the properties which it in fact retained.

(2) *Special rule.* For the purpose of applying section 435 (f) and (g) (relating to capital changes) in the case of a component corporation which continues in existence after a Part II transaction described in section 461 (a) (1) (E), the consideration received by such component corporation in such transaction shall be considered as having been held by it at all such times prior to the transaction as are taken into account under section 435 (f) and (g). For example, in computing the adjustment with respect to inadmissible assets or, if applicable, stock in a member of a controlled group, the stock in an acquiring corporation received by the component corporation in the transaction will, for the purpose of section 435 (g), be deemed to have been held by the component corporation on the first day of its first taxable year ending after June 30, 1950, if the transaction takes place after the beginning of such taxable year.

PAR. 2. There is inserted immediately after section 462, the following:

§ 40.462-1 General rules for determining average base period net income of an acquiring corporation.—(a) *Introductory.* (1) In the case of an acquiring corporation, its average base period net income, for the purpose of the excess profits credit based on income, computed under the general average method (section 435 (d)), may be determined by computing its excess profits net income either with or without reference to section 462 (b) of Part II, whichever results in the lesser excess profits tax. If computed without reference to section 462 (b), the excess profits net income of the acquiring corporation is computed with reference to its base period experience but without reference to the base period experience of its component corporations. If computed with reference to section 462 (b), the excess profits net income of the acquiring corporation shall be the excess profits net income or deficit in excess profits net income for each month of the acquiring corporation's base period (as defined in section 435 (b)), increased or decreased, as the case may be, by the addition or reduction resulting from including the excess profits net income or deficit in excess profits net income for that month of all component corporations in the manner provided in section 462 (b).

(2) In the case of an acquiring corporation, its average base period net income, for the purpose of the excess profits credit based on income, computed under the alternative based on growth (section 435 (e)), may be determined, subject to the rules provided in section 462 (c), by computing its excess profits net income either with or without reference to section 462 (b) of Part II, whichever results in the lesser excess profits tax. Under section 462 (c), the acquiring corporation's eligibility to use the growth alternative may be determined, in certain instances, with reference to its base period experience and either with or without reference to the base period experience of its component corporations. In other circumstances, it must be determined with reference to the base period experience of its component corporations. See § 40.462-2.

(3) In the case of an acquiring corporation, its average base period net income, for the purpose of the excess profits credit based on income, computed under section 442 (c) and (d) (abnormalities in the base period), section 443 (change in products or services), section 444 (increase in capacity for production or operation), section 445 (new corporations), or section 446 (depressed industry subgroups), shall be determined under the rules set forth in section 462 (d), (e), (f), (g) or (h). See §§ 40.462-3 through 40.462-8.

(b) *Method of recomputation of excess profits net income of acquiring corporation with reference to that of its component corporations.*—(1) *In general.* The following steps are required for the recomputation of the excess profits net income of the acquiring corporation with reference to the base period experience of its component corporations:

(i) The excess profits net income (or deficit in excess profits net income) for each month in the base period of the

acquiring corporation, and, for the purpose of section 435 (e) (2) (E) and (G), for each month in the additional period ending June 30, 1950, must be determined for the acquiring corporation and for each component corporation. Except as provided below with respect to the taxable year of the component corporation in which the Part II transaction occurs, the excess profits net income (or deficit in excess profits net income) of any corporation for any month during any part of which that corporation was actually in existence (or constructively in existence by reason of a previous Part II transaction) is determined by dividing the excess profits net income computed under section 433 (b) (or deficit in excess profits net income computed under section 433 (c)) for the taxable year of that corporation in which such month falls by the number of full calendar months in such taxable year, and, in the case of a transaction described in section 461 (a) (1) (E), by taking the portion thereof properly allocable to the properties transferred. In the case of the taxable year of the component corporation in which the Part II transaction occurs, the excess profits net income (or deficit in excess profits net income) for any month in such taxable year shall be determined under the rules provided in § 40.461-3 (c), and, in the case of a transaction described in section 461 (a) (1) (E), by taking the portion thereof properly allocable to the properties transferred. The excess profits net income of any corporation for any month during no part of which such corporation was actually in existence (or constructively in existence by reason of a previous Part II transaction) shall be zero, except as provided in subdivision (ii) of this subparagraph. If any corporation was an acquiring corporation in a previous Part II transaction, its excess profits net income for any month prior to such transaction shall be its excess profits net income for such month recomputed under section 462 (b) (but without regard to the last sentence of section 462 (b) (3)) by reference to such previous Part II transaction. For the purpose of section 435 (e) (2) (E) and (G), the excess profits net income or deficit in excess profits net income is subject to the percentages specified in section 435 (e) (2) (E).

(ii) If the acquiring corporation was in existence (either actually in existence or, under section 461 (d), constructively in existence through a component corporation) at the beginning of its base period, the excess profits net income for each month prior to the Part II transaction, during all of which either the acquiring corporation or any component corporation was not in existence (either actually or constructively by reference to a previous Part II transaction), is computed for such acquiring or component corporation under this subparagraph. The excess profits net income for any such month shall be 1 percent of such corporation's equity capital (as defined in section 437 (c) and § 40.437-5), reduced by an amount determined under the inadmissible asset ratio (computed under section 440 (b) and § 40.440-1), both determined as of

the close of the day before the Part II transaction occurred, or at the close of the base period of such corporation, whichever date is earlier. See example, § 40.462-1 (c). There is no such determination for any month after the Part II transaction. For adjustments to equity capital, see § 40.462-1 (b) (3).

(iii) For each month of the acquiring corporation's base period, and, for the purpose of section 435 (e) (2) (E) and (G), for each month thereafter for the period ending June 30, 1950, the excess profits net income or deficit in excess profits net income of the acquiring corporation for that month, as determined under subdivisions (i) and (ii) of this subparagraph shall be increased or decreased, as the case may be, by the excess profits net income or deficit in excess profits net income of each component corporation for that month so determined; except that, if the acquiring corporation acquires only a part of the component corporation's properties in a transaction described in section 461 (a) (1) (E), then the increase or decrease shall be made for only that portion of such component corporation's excess profits net income or deficit in excess profits net income as is allocable under section 462 (d) and § 40.462-9 to the properties of the component corporation transferred to the acquiring corporation. The excess profits net income of the acquiring corporation for any month, recomputed as provided in the previous sentence, shall in no event be less than zero. All component corporations must be taken into consideration in making the recomputation of the excess profits net income of the acquiring corporation. In the case of a component corporation which does not terminate its existence in connection with the Part II transaction, its excess profits net income or deficit in excess profits net income for any month or part thereof after such transaction shall not be taken into account by the acquiring corporation in recomputing its excess profits net income for such month. See section 461 (c) and § 40.461-3 (b) (5).

(2) *Special rules for partnerships and sole proprietorships.*—In the case of a component corporation which is a partnership or a business owned by a sole proprietorship (see § 40.461-5), its excess profits net income or deficit in excess profits net income for each month falling within the acquiring corporation's base period, and, for the purpose of section 435 (e) (2) (E) and (G), for each month thereafter for the period ending June 30, 1950, shall be determined as though such partnership or such business owned by a sole proprietorship had been a corporation. See section 462 (k). Among the adjustments which are necessary in such a case are the following:

(i) A reasonable deduction for salary or compensation to each partner or to the sole proprietor for personal services actually rendered shall be allowed;

(ii) The credit for dividends received shall be that applicable to corporations;

(iii) The treatment of capital gains and losses and of taxes (whether state, local, or other) shall be that applicable to corporations;

(iv) The deduction for charitable contributions shall be that allowed by section 23 (q).

(3) *Limitations.* The determination under subparagraph (1) (ii) of this paragraph, of excess profits net income computed at 1 percent of equity capital (hereinafter referred to as "constructive income") for any month during no part of which the corporation was in existence (hereinafter referred to as a "vacant month") is subject to each of the following limitations:

(i) Section 462 (b) (2) provides for an adjustment to prevent duplication in determining the equity capital factor, 1 percent of which is allowed as the excess profits net income. The cases generally covered by this limitation are those in which there was cross-ownership of stock between corporations prior to the Part II transaction, but it also covers cases where property or stock of one corporation has been transferred to another corporation as paid-in surplus or as a contribution to capital. As such, the primary purpose of this limitation is to prevent doubling up on the factor of equity capital upon which the constructive income allowed under section 462 (b) (2) is computed. Briefly stated, the limitation under section 462 (b) (2) provides that in case either the acquiring corporation or any component corporation owned stock in any other such corporation on the day for which the equity capital factor is determined, then such equity capital factor, upon which the constructive income allowed under section 462 (b) (2) with respect to vacant months of such corporations is computed, shall be adjusted to such extent as may be necessary to prevent such constructive income from reflecting money or property paid in by either of such corporations to the other for stock or as paid-in surplus or as a contribution to capital, or from reflecting stock of either paid in for stock of the other or as paid-in surplus or as a contribution to capital. For this purpose, stock in either such corporation which has in the hands of the other corporation a basis determined with reference to the basis of stock previously acquired by the issuance of such other corporation's own stock shall be deemed to have been paid in for the stock of such other corporation. The following example illustrates the nature of the adjustment to be made in cases to which this limitation under section 462 (b) (2) applies:

Example. The A Corporation, the B Corporation, and the C Corporation make their income tax returns on the calendar year basis. The A Corporation was in existence and commenced business prior to January 1, 1946. The B Corporation came into existence on January 1, 1948. The C Corporation came into existence on December 31, 1948, and on that day it issued all of its capital stock to the B Corporation for cash of the latter. The B Corporation held this stock continuously until January 15, 1950, at which time it acquired all of the properties of the A Corporation and the C Corporation in a transaction described in section 461 (a). Both the B Corporation and the C Corporation are entitled under section 462 (b) (2) to a constructive income for each of the months in the calendar years 1946 and 1947. The C Corporation is not entitled to a constructive income for the first 11 months

in the year 1948. See subparagraph (1) (ii) of this paragraph. The constructive income for each such corporation is for each vacant month an amount equal to 1 percent of the equity capital of such corporation determined as of the close of December 31, 1949, such equity capital being reduced by an amount which is the same percentage of such equity capital as the percentage which the total of the adjusted bases of the inadmissible assets held by such corporation at the close of such day is of the total of the adjusted bases of the admissible and inadmissible assets held at the close of such day. In the case of the reduction for the B Corporation with respect to inadmissible assets, if the amount of such reduction attributable to the stock in the C Corporation is an amount which is less than the adjusted basis of such stock in the hands of the B Corporation at the close of December 31, 1949, a further adjustment must be made to the B Corporation's equity capital in order to eliminate duplication of the same equity capital. Assuming that the adjusted basis of the C Corporation's stock in the hands of the B Corporation is \$50,000; that on December 31, 1949, the B Corporation owned shares in other domestic corporations having an adjusted basis of \$10,000; that the B Corporation's equity capital at the close of December 31, 1949, is \$450,000; and that the total of the adjusted bases of the admissible and inadmissible assets of the B Corporation at the close of December 31, 1949, is \$600,000, the computation of the adjustment required under section 462 (b) (2) because of the ownership by the B Corporation of stock in the C Corporation may be illustrated as follows:

(A) Total inadmissible assets-----	\$60,000
(B) Total admissible and inadmissible assets-----	600,000
(C) Percentage which the total inadmissible assets is of total admissible and inadmissible assets (percent) --	10
(D) Equity capital-----	450,000
(E) Amount of reduction in equity capital for inadmissible assets— 10 percent of item (D)-----	45,000
(F) Reduction in equity capital attributable to the stock in the C Corporation $\left(\frac{50,000}{60,000} \times 45,000\right)$ -----	37,500
(G) Basis of the C Corporation's stock-----	50,000
(H) Additional adjustment to be made in equity capital in order to arrive at the equity capital under section 462 (b) (2) upon which constructive income is computed-----	12,500
(I) Equity capital-----	450,000
Adjustment for inadmissible assets (item (E) above)-----	\$45,000
Adjustment under section 462 (b) (2) (item (H) above)-----	12,500
	57,500
(J) Equity capital as adjusted under section 462 (b) (2) upon which constructive income is computed-----	392,500

(ii) Section 462 (j) (1) may require the exclusion of all or a part of the constructive income of a component corporation which is determined under section 462 (b) (2) for vacant months, if the acquiring corporation (or any corporation which later became a component corporation of the acquiring corporation) acquired for assets (other than its own stock) the stock of such component corporation. See § 40.462-10. The adjustment necessary under section 462 (j) (1) where constructive income for vacant months would otherwise

be determined under section 462 (b) (2) is illustrated by the following example:

Example. The A Corporation was in existence and commenced business prior to January 1, 1946. The B Corporation came into existence on January 1, 1947. Both corporations make their income tax returns on the calendar year basis. The A Corporation sold certain assets for cash, and on January 1, 1948, it used such cash to purchase all of the stock of the B Corporation from the latter's stockholders. On December 31, 1950, the A Corporation acquired all of the properties of the B Corporation in a Part II transaction. By reason of section 462 (j) (1), the base period experience of the B Corporation prior to January 1, 1948, is to be excluded and, therefore, no constructive income need be determined for the B Corporation for the year 1946.

(c) *General average method.* The computation of the average base period net income of an acquiring corporation, determined under the general average method of section 435 (d) by computing the excess profits net income with reference to section 462 (b), may be illustrated by the following example:

Example. The A Corporation came into existence and commenced business prior to January 1, 1946. The B Corporation and the C Corporation each came into existence on January 1, 1947. The A Corporation, the B Corporation, and the C Corporation each makes its income tax returns on the calendar year basis. The A Corporation acquired all of the properties of the B Corporation and of the C Corporation in a Part II transaction on January 1, 1949. The B Corporation and the C Corporation each had equity capital of \$100,000 at the close of December 31, 1948 (the day before the Part II transaction). The excess profits net income for each of the corporations for the base period taxable years is as follows:

	EXCESS PROFITS NET INCOME			
	For taxable year—			
	1946	1947	1948	1949
A Corporation-----	-\$36,000	\$48,000	\$50,000	\$108,000
B Corporation-----	0	-24,000	24,000	-----
C Corporation-----	0	12,000	24,000	-----

The excess profits net income for each month in such taxable years is as follows:

	EXCESS PROFITS NET INCOME			
	For each month in calendar year—			
	1946	1947	1948	1949
A Corporation-----	-\$3,000	\$4,000	\$5,000	\$9,000
B Corporation-----	11,000	-2,000	2,000	-----
C Corporation-----	11,000	1,000	2,000	-----
Total-----	-1,000	3,000	9,000	9,000

¹ Constructive income computed under section 462 (b) (2). See paragraph (b) (1) (ii) of this section.

The excess profits net income of the A Corporation for each month as recomputed under section 462 (b) is the total excess profits net income for that month, as shown in the above table, except that, for each month in 1946, the recomputed excess profits net income is increased to zero. Since the 36 consecutive months in the years 1947, 1948, and 1949 have the highest aggregate excess profits net income, the average base period net income is such aggregate excess profits net income divided by 3. The average base period net income of the A Corporation, re-

computed under section 462 (b), is \$84,000, determined as follows:

Aggregate for months in 1947 (12 × \$3,000) -----	\$36,000
Aggregate for months in 1948 (12 × \$9,000) -----	108,000
Aggregate for months in 1949 (12 × \$9,000) -----	108,000
Aggregate for 36 months -----	252,000
Aggregate divided by 3 -----	84,000

This figure, subject to the percentage prescribed in section 435 (a), may be used by the A Corporation in computing its excess profits credit based on income for the purpose of determining its excess profits tax for 1950 and future excess profits tax taxable years.

§ 40.462-2 Alternative average base period net income based on growth—(a)

In general. Section 462 (c) deals with the effect of a Part II transaction upon the right of an acquiring corporation to the use of the growth alternative provided in section 435 (e). See § 40.462-1 (a) (2). The rules for applying section 435 (e) in the case of a party to a Part II transaction may differ, depending upon whether eligibility under section 435 (e) (1) (A) or under section 435 (e) (1) (B) is involved, whether the Part II transaction is of a type described in section 461 (a) (1) (E), whether the acquiring corporation actually or constructively through a component corporation commenced business prior to the beginning of its base period, whether the acquiring corporation determines its excess profits net income with reference to the recomputation provided in section 462 (b), and whether the transaction occurs prior to or after certain dates.

(b) *Part II transactions other than a transaction described in section 461 (a) (1) (E).*—(1) *Alternative under section 435 (e) (1) (A).* (i) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), section 462 (c) provides that an acquiring corporation shall be entitled to the use of an alternative average base period net income under section 435 (e) (1) (A), relating to growth, only—

(a) If the Part II transaction occurs after June 30, 1950, if such acquiring corporation was entitled under section 435 (e) (1) (A) to the use of an alternative average base period net income based on growth immediately prior to the date of the Part II transaction, and if the acquiring corporation determines its excess profits net income without reference to the recomputation provided in section 462 (b); or

(b) Regardless of the date on which the Part II transaction occurs, if the acquiring corporation (other than a corporation created incident to such transaction) and all the component corporations actually commenced business prior to the beginning of the acquiring corporation's base period, if the acquiring corporation recomputes its excess profits net income under section 462 (b), and if the acquiring corporation qualifies under the rules of section 435 (e) (1) (A) after applying the rules set forth in subdivision (ii) of this subparagraph.

(ii) For the purpose of subdivision (1) (b) of this subparagraph, the acquiring

corporation shall combine its total assets on the date specified in section 435 (e)

(1) (A) (i) with the total assets of each component corporation on such date (the total assets of each such corporation being determined under that section with the elimination of stock of one such corporation held by another such corporation), and it shall combine with its total payroll and its total gross receipts for that portion of its base period which preceded such transaction the total payroll and total gross receipts of each such component corporation for that portion of such period. The allocation of payroll and gross receipts of a component corporation for its taxable year to any such portion of such period shall be made in accordance with the rules provided in section 435 (e) (4) and (5) subject, for the taxable year of the transaction, to the principles described in § 40.461-3 (c). In combining gross receipts, proper adjustment shall be made to prevent duplication, including the elimination of those gross receipts of a component corporation or the acquiring corporation which are attributable to transactions between either such component corporation and the acquiring corporation or such component corporation and another component corporation.

(iii) If the acquiring corporation does not qualify under subdivision (i) (b) of this subparagraph, for the use of an alternative average base period net income under section 435 (e) (1) (A) because any corporation a party to the Part II transaction (other than a corporation created incident to such transaction) had not actually commenced business prior to the beginning of its base period or because the total of the assets of the acquiring corporation determined under subdivision (ii) of this subparagraph, exceeds \$20 million, if the Part II transaction occurs after June 30, 1950, if the acquiring corporation determines its average base period net income under section 435 (d) after recomputing its excess profits net income under section 462 (b), and if any corporation a party to the Part II transaction (whether the acquiring corporation or a component corporation) was under section 435 (e) (1) (A) entitled immediately prior to the date of the transaction to the use of an alternative average base period net income based on growth, then one-twelfth of such alternative average base period net income of such corporation shall be treated as its monthly excess profits net income for the purpose of determining such average base period net income of the acquiring corporation under section 435 (d).

(2) *Alternative under section 435 (e) (1) (B).* (i) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), section 462 (c) provides that an acquiring corporation shall be entitled to the use of an alternative average base period net income under section 435 (e) (1) (B), relating to growth, only—

(a) If the Part II transaction occurs after December 31, 1950, if such acquiring corporation was entitled under section 435 (e) (1) (B) to the use of an alternative average base period net in-

come based on growth immediately prior to the date of the Part II transaction, and if the acquiring corporation determines its excess profits net income without reference to the recomputation provided in section 462 (b); or

(b) If immediately prior to a Part II transaction occurring prior to January 1, 1951, the acquiring corporation (other than a corporation created incident to such transaction) and all component corporations were furnishing products or classes of products of the type described in section 435 (e) (1) (B) (ii), if the acquiring corporation (other than a corporation created incident to such transaction) and all component corporations actually commenced business prior to the beginning of the acquiring corporation's base period, if the acquiring corporation recomputes its excess profits net income under section 462 (b), and if the acquiring corporation qualifies under the rules of section 435 (e) (1) (B) after applying the rules set forth in subdivision (ii) of this subparagraph; or

(c) If immediately prior to a Part II transaction occurring after December 31, 1950, the acquiring corporation (other than a corporation created incident to such transaction) and all component corporations were entitled under section 435 (e) (1) (B) to the use of an alternative average base period net income based on growth, if the acquiring corporation (other than a corporation created incident to such transaction) and all component corporations actually commenced business prior to the beginning of the acquiring corporation's base period, if the acquiring corporation recomputes its excess profits net income under section 462 (b), and if the acquiring corporation qualifies under the rules of section 435 (e) (1) (B) after applying the rules set forth in subdivision (ii) of this subparagraph.

(ii) For the purpose of subdivision (1) (b) and (c) of this subparagraph, the acquiring corporation shall combine with its net sales for that portion of the period prior to January 1, 1951, which preceded such Part II transaction, the net sales of each such component corporation for such portion of such period. In combining net sales, proper adjustment shall be made to prevent duplication, including the elimination of those net sales of a component corporation or the acquiring corporation which are attributable to transactions between either such component corporation and the acquiring corporation or such component corporation and another component corporation.

(iii) If the Part II transaction occurs after December 31, 1950, if the acquiring corporation does not qualify under subdivision (1) (c) of this subparagraph, for the use of an alternative average base period net income under section 435 (e) (1) (B), if the acquiring corporation determines its average base period net income under section 435 (d) after recomputing its excess profits net income under section 462 (b), and if any corporation a party to the Part II transaction (whether the acquiring corporation or a component corporation) was entitled under section 435 (e) (1) (B), immediately prior to the date of the transaction, to

the use of an alternative average base period net income based on growth, then one-twelfth of such alternative average base period net income of such corporation shall be treated as its monthly excess profits net income for the purpose of determining such average base period net income of the acquiring corporation under section 435 (d).

(c) *Part II transactions described in section 461 (a) (1) (E)*—(1) *Alternative under section 435 (e) (1) (A)*. (i) In the case of a Part II transaction described in section 461 (a) (1) (E), section 462 provides that an acquiring corporation shall be entitled to the use of an alternative average base period net income under section 435 (e) (1) (A), relating to growth, only if it recomputes its excess profits net income under section 462 (b) and—

(a) If the transaction occurs after the close of the base period of the component corporation, and if immediately prior to the date of the transaction the component corporation qualified under section 435 (e) (1) (A) for the use of an alternative average base period net income under that section; or

(b) If the transaction occurred during the base period of the acquiring corporation, if the component corporation actually commenced business prior to the beginning of its base period, and if the acquiring corporation qualifies under the rules of section 435 (e) (1) (A) after applying the rules set forth in subdivision (ii) of this subparagraph.

(ii) For the purpose of subdivision (i) (b) of this subparagraph, the acquiring corporation shall be considered as having held the total assets of the component corporation as of the date specified in section 435 (e) (1) (A) (i) as determined under that section for that date, and it shall be treated as having had, for the period prior to the day of the transaction, an allocated share of the payroll and of the gross receipts of the component corporation. Such payroll and gross receipts shall be determined in accordance with the rules provided in section 435 (e) (4) and (5) subject, for the taxable year of the transaction, to the principles described in § 40.461-3 (c); and such allocation of such payroll and gross receipts shall be in the same ratio as that existing in the allocation of the excess profits net income. See section 462 (i) and § 40.462-9.

(2) *Alternative under section 435 (e) (1) (B)*. (i) In the case of a Part II transaction described in section 461 (a) (1) (E), section 462 (c) provides that an acquiring corporation shall be entitled to the use of an alternative average base period net income under section 435 (e) (1) (B), relating to growth, only if it recomputes its excess profits net income under section 462 (b) and—

(a) If the transaction occurs after December 31, 1950, and if immediately prior to the date of the transaction the component corporation qualifies under section 435 (e) (1) (B) for the use of an alternative average base period net income under that section; or

(b) If the transaction occurred prior to January 1, 1951, if the component corporation actually commenced business prior to the beginning of its base

period, if immediately prior to the transaction the component corporation was furnishing a product or class of products of the type described in section 435 (e) (1) (E), and if the acquiring corporation qualifies under the rules of section 435 (e) (1) (B) after applying the rules set forth in subdivision (ii) of this subparagraph.

(ii) For the purpose of subdivision (i) (b) of this subparagraph, the acquiring corporation shall be considered as having had, for the period prior to the date of the transaction, an allocated share of the net sales of the component corporation, such allocation of net sales being in the same ratio as that existing in the allocation of the excess profits net income. See section 462 (i) and § 40.462-9.

(3) *Special rules*. For special rules with respect to a Part II transaction described in section 461 (a) (1) (E) involving a transfer to an acquiring corporation not created incident to the transaction, or involving a transfer by more than one component corporation to an acquiring corporation, see § 40.461-7 (b).

§ 40.462-3 *Alternative average base period net income under section 442, 443, 444, 445, or 446*—(a) In general. Section 462 (d), (e), (f), (g), and (h) provides special rules applicable in determining the average base period net income of an acquiring corporation under sections 442 to 446, inclusive. Certain rules generally applicable under those subsections of section 462 are set forth in this section. Additional special rules provided in such subsections of section 462 are set forth in the sections immediately following this section. The rules for applying sections 442 to 446, inclusive, and section 462 (d) to (h), inclusive, may differ depending upon whether the Part II transaction is of a type described in section 461 (a) (1) (E) (relating to a transfer by a component corporation of a part, as distinguished from all or substantially all, of its properties), whether the transaction occurs before or after certain dates, and whether the acquiring corporation has actually or constructively through a component corporation (see section 461 (d)) commenced business on or before the first day of the base period.

(b) *Commencement of business*. If neither the acquiring corporation nor any component corporation was in existence and commenced business on or before the first day of the base period of the acquiring corporation, the acquiring corporation is not entitled to determine its average base period net income under section 442, 443, 444, or 446, or under section 462 (d), (e), (f), or (h). If either the acquiring corporation or any component corporation commenced business on or before the first day of the base period of the acquiring corporation, the acquiring corporation is not entitled to compute its average base period net income under section 445 or section 462 (g), except to the extent that such sections are involved under paragraph (c) of this section. See section 461 (d) as to constructive existence and constructive commencement of business.

(c) *Rule applicable if all parties were previously entitled to an alternative average base period net income*. If immediately prior to the transaction each of the corporations, parties to the Part II transaction, other than a corporation created incident to the Part II transaction, was entitled to compute its average base period net income under section 442 (d) (relating to abnormalities in base period), section 443 (relating to change in products or services), section 444 (relating to increase in capacity for production or operation), section 445 (relating to new corporations), or section 446 (relating to depressed industry subgroups), then the acquiring corporation (whether or not created incident to the Part II transaction) may determine its average base period net income after the transaction by computing its own average base period net income under whichever of such sections is applicable to it immediately prior to the transaction, and by adding thereto the average base period net income of each component corporation separately computed under whichever of such sections is applicable to such component corporation immediately prior to the transaction. However, in the case of a transfer by a corporation of a part, as distinguished from all or substantially all, of its properties to a corporation created incident to such transfer in a transaction to which section 461 (a) (1) (E) is applicable, only so much of the average base period net income of such component corporation, so computed, as is allocable under the rules of section 462 (i) and § 40.462-9 to the properties of such component corporation transferred to the acquiring corporation is available to such acquiring corporation under the rule set forth in the preceding sentence. The rules provided in this paragraph are not applicable in any case in which all of the corporations (other than a corporation created incident to the Part II transaction), parties to the Part II transaction, were entitled immediately prior to the transaction to the benefits of section 445. See § 40.462-7 for rules applicable in such case. See section 470 for rules applicable, in certain cases involving intercorporate stockholdings, in determining the total assets of a component corporation for the purpose of the separate computation under this paragraph of its average base period net income immediately prior to the transaction.

(d) *Method of determination*. An acquiring corporation not entitled to compute its average base period net income under paragraph (c) of this section may nevertheless be entitled, under the circumstances set forth in §§ 40.462-4 to 40.462-8, inclusive, to apply sections 442 to 446, inclusive, if it meets the requirements of those sections and of section 462 (d) through (h). The following rules are applicable for the purpose of determining whether, after the transaction, an acquiring corporation meets the requirements of section 442, 443, 444, 445, or 446 and § 40.462-4, § 40.462-5, § 40.462-6, § 40.462-7, or § 40.462-8:

(1) *Assets*. For this purpose, the total assets of each component corporation held by it on a day for which the computation of total assets of the acquir-

ing corporation is required by the applicable section, which day preceded the day on which the transaction occurred, shall be treated as having been held by the acquiring corporation on such day.

(2) *Interest.* For this purpose, the interest paid or incurred by each component corporation during the period prior to the date of the transaction, taken into account in computing the interest adjustment applicable in determining average base period net income, shall be considered as having been paid or incurred by the acquiring corporation at the time it was paid or incurred by such component corporation.

(3) *Gross receipts.* For this purpose, the gross receipts of each component corporation for the period prior to the date of the transaction, taken into account under such section in determining the industry classification of the acquiring corporation, shall be treated as the gross receipts of the acquiring corporation. Such gross receipts for any portion of a taxable year of the component corporation is determined in accordance with the rules provided in section 435 (e) (5) subject, for the taxable year of the transaction, to the principles described in § 40.461-3 (c).

In applying the foregoing rules, proper adjustment as to each item shall be made to prevent duplication, including the elimination of such portion of any item with respect to the component corporation or the acquiring corporation as is attributable to transactions between either such component corporation and the acquiring corporation or such component corporation and another component corporation.

(e) *Method of determination in case of transactions described in section 461 (a) (1) (E).* In the case of a transfer by a corporation of a part, as distinguished from all or substantially all, of its properties to a corporation created incident to such transfer in a transaction to which section 461 (a) (1) (E) is applicable, there shall be available to such acquiring corporation in determining its average base period net income under section 442, 443, 444, 445, or 446, only such portion of each item referred to in paragraph (d) of this section, as is allocable to the properties of such component corporation transferred to the acquiring corporation. Such portion shall be determined in a manner consistent with that used in the allocation to the acquiring corporation under section 462 (i) and § 40.462-9 of the excess profits net income of the component corporation.

(f) *Application for benefits of sections 442 to 446.* An acquiring corporation which computes its average base period net income under section 442, 443, 444, 445, or 446, and under section 462 (d), (e), (f), (g), or (h), must comply with the provisions of section 447 (e) with respect to the filing of an application for the benefits of such sections.

§ 40.462-4 *Application of section 442—(a) Part II transactions other than a transaction described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), which occurred during the base period of an

acquiring corporation, the acquiring corporation shall be entitled to determine its average base period net income under section 442 (c) or (d) if and to the extent that it satisfies the requirements of either such subsection and satisfies the other requirements of section 442 after the application of the rules provided in § 40.462-3 (b) and (d) and of the following rules:

(i) For this purpose, the excess profits net income (or deficit therein) of the component corporation for any part of the base period of the acquiring corporation prior to the transaction is attributed to the acquiring corporation in determining the excess profits net income (or deficit therein) of the acquiring corporation for any month of its base period for the purpose of section 442 (c) or (d), and the acquiring corporation shall recompute its monthly excess profits net income as provided in section 462 (b); however, the excess profits net income of the acquiring corporation for any month so recomputed may be less than zero, and in such case, such deficit is taken into account to the extent provided in section 442;

(ii) For this purpose, the business experience of the component corporation prior to the date of the transaction is attributed to the acquiring corporation for the purpose of determining the existence of an abnormality under section 442 (a).

(2) If any corporation, a party to a Part II transaction other than a transaction described in section 461 (a) (1) (E), which transaction occurs after the close of the base period of the acquiring corporation, was entitled immediately prior to the transaction to compute its average base period net income under section 442 (c) or under section 442 (d), then in recomputing the acquiring corporation's excess profits net income under section 462 (b) for the purpose of the general average method of determining its average base period net income under section 435 (d)—

(i) The substitute excess profits net income for any month identified under section 442 (c) (1) and (3) of any corporation entitled to the benefits of section 442 (c) immediately prior to the transaction shall be considered the excess profits net income of that corporation for such month;

(ii) In the case of any corporation entitled to the benefits of section 442 (d) immediately prior to the transaction, one-twelfth of the average base period net income, separately computed, to which such corporation was entitled under section 442 (d) shall be considered the excess profits net income of that corporation for each month of its base period.

(3) An acquiring corporation shall also be entitled to apply section 442 to the extent provided in § 40.462-3 (c), relating to a Part II transaction involving corporations each of which was previously entitled to the benefits of section 442 (d), 443, 444, 445, or 446.

(b) *Part II transactions described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction described in section 461 (a) (1) (E), which occurred during the base period of an acquiring

corporation, the acquiring corporation shall be entitled to determine its average base period net income under section 442 (c) or (d) if and to the extent that it satisfies the requirements of either such subsection and satisfies the other requirements of section 442 after the application of the rules prescribed in paragraph (a) (1) of this section, and in § 40.462-3 (b) and (e). In applying the rules of paragraph (a) (1) of this section, there shall be available to the acquiring corporation in determining its average base period net income under section 442 only such portion of each item of the component corporation's experience prior to the transaction as is allocable to the properties of such component corporation transferred to the acquiring corporation. Such portion shall be determined in a manner consistent with that used in the allocation to the acquiring corporation under section 462 (i) and § 40.462-9 of the excess profits net income of the component corporation.

(2) In the case of a Part II transaction described in section 461 (a) (1) (E), where the transaction occurs after the close of the base period of the acquiring corporation, and where the component corporation was entitled immediately prior to the transaction to compute its average base period net income under section 442 (c) or under section 442 (d), then in recomputing the acquiring corporation's excess profits net income under section 462 (b) for any month for the purpose of the general average method of determining its average base period net income under section 435 (d), the rules prescribed in paragraph (a) (2) of this section, shall be applicable, except that there shall be available to the acquiring corporation only such portion of the excess profits net income of the component corporation computed under paragraph (a) (2) of this section, as is allocable to the acquiring corporation under the rules of section 462 (i) and § 40.462-9.

(3) For special rules with respect to a Part II transaction described in section 461 (a) (1) (E) involving a transfer to an acquiring corporation not created incident to the transaction, or involving a transfer by more than one component corporation to an acquiring corporation, see § 40.461-7 (b).

§ 40.462-5 *Application of section 443—(a) Part II transactions other than a transaction described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction, other than a transaction described in section 461 (a) (1) (E), where any corporation a party to the transaction (other than an acquiring corporation created incident to such transaction) had not actually commenced business on or before the first day of the acquiring corporation's base period, the acquiring corporation shall not be entitled to compute its average base period net income under section 443 except to the extent provided in § 40.462-3 (c), or to the extent provided in subparagraph (3) of this paragraph.

(2) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), where, at

the time of the transaction, one or more of the corporations, parties to the transaction, had made a substantial change, within the meaning of section 443 (a) (1) and § 40.443-1 (a) (1), in the products or services which it furnished, but where such corporations at the time of the transaction were not yet qualified to compute their average base period net income under section 443, the acquiring corporation shall be entitled to compute its average base period net income under section 443 with respect to such change if the requirements of such section are satisfied after the application of the rules provided in § 40.462-3 (b) and (d) and of the following rules:

(i) For this purpose, the acquiring corporation shall recompute its excess profits net income in the manner provided in section 462 (b), except that the excess profits net income so recomputed may be less than zero;

(ii) For this purpose, the gross income and the net income of all component corporations for the taxable years beginning with, within, and subsequent to the taxable year in which the first change in products or services was made, such taxable year being determined by reference to the corporation which made such change, shall be treated as the gross income and net income, respectively, of the acquiring corporation;

(iii) For this purpose, each change in products or services made by a component corporation shall be treated as having been made by the acquiring corporation at the time it was made by the component corporation.

(3) Where a corporation a party to the Part II transaction commenced business during the 36-month period ending on the last day of the base period of the acquiring corporation and the transaction occurred prior to December 1, 1950, the activities of that corporation shall be treated, for the purpose of section 443, as though they constituted a substantial change in products or services within the meaning of section 443 (a) (1) and § 40.443-1 (a) (1). In such a case, the rules prescribed in subparagraph (2) of this paragraph, and in § 40.462-3 (b) and (d) shall be applicable for the purpose of determining whether or not the acquiring corporation meets the requirements of section 443.

(4) In the case of a Part II transaction other than one described in section 461 (a) (1) (E), where subsequent to the date of the transaction there is a substantial change in the products or services furnished by the acquiring corporation within the meaning of section 443 (a) (1) and § 40.443-1 (a) (1), the acquiring corporation shall be entitled to determine its average base period net income under section 443 with respect to such change if it qualifies under such section after the application of the rules prescribed in subparagraph (2) of this paragraph and in § 40.462-3 (b) and (d).

(5) Except to the extent provided in subparagraph (3) of this section, an acquiring corporation shall not be deemed, for the purpose of section 443, to have made a substantial change in products or services furnished by it solely by reason of a change in such products or serv-

ices resulting from the execution of a Part II transaction.

(6) An acquiring corporation shall also be entitled to apply section 443 to the extent provided in § 40.462-3 (c), relating to a Part II transaction involving corporations each of which was previously entitled to the benefits of section 442 (d), 443, 444, 445, or 446.

(b) *Part II transactions described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction described in section 461 (a) (1) (E), the acquiring corporation shall be entitled to compute its average base period net income under section 443 only—

(i) To the extent provided in § 40.462-3 (c); or

(ii) If there was, after the date of the transaction, a substantial change in the products or services furnished by the acquiring corporation within the meaning of section 443 (a) (1) and § 40.443-1 (a) (1), and if the acquiring corporation qualifies under section 443 after the application of the rules prescribed in paragraph (a) (2) of this section, and in § 40.462-3 (b) and (e). In applying the rules of paragraph (a) (2) of this section, there shall be available to the acquiring corporation in determining its average base period net income under section 443 only such portion of each item of the component corporation's experience prior to the transaction as is allocable to the properties of such component corporation transferred to the acquiring corporation. Such portion shall be determined in a manner consistent with that used in the allocation to the acquiring corporation under section 462 (i) and § 40.462-9 of the excess profits net income of the component corporation.

(2) For special rules with respect to a Part II transaction described in section 461 (a) (1) (E) involving a transfer to an acquiring corporation not created incident to the transaction, or involving a transfer by more than one component corporation to an acquiring corporation, see § 40.461-7 (b).

§ 40.462-6 *Application of section 444—(a) Part II transactions other than a transaction described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), where at the time of the transaction one or more of the corporations, parties to the transaction, had made an addition or additions to its facilities or had replaced all or a part of its existing facilities, within the meaning of section 444 (b) and § 40.444-2, and where the transaction occurred prior to the close of the base period of the corporation making such addition or replacement, the acquiring corporation shall be entitled to compute its average base period net income under section 444, if the requirements of such section are satisfied after the application of the rules provided in § 40.462-3 (b) and (d) and of the following rules:

(i) For this purpose, the capacity for production or operation, the adjusted basis of the total facilities, and the basis (unadjusted) of the total facilities, determined in accordance with the rules applicable under section 444 (b) and

§ 40.444-2, of all component corporations as they existed on the day prior to the beginning of the 36-month period ending with the last day of the base period of the acquiring corporation, shall be treated as having been held by the acquiring corporation on such day for the purpose of determining whether an increase in capacity for production or operation shall be deemed to have occurred within the meaning of section 444 (b) and § 40.444-2;

(ii) For this purpose, each addition or additions to its facilities or replacement of all or part of its existing facilities by a component corporation shall be treated as having been made by the acquiring corporation at the time it was made by such component corporation;

(iii) For this purpose, if the Part II transaction occurred before the close of the base period of the acquiring corporation and after the last day of the taxable year of the acquiring corporation immediately preceding its first taxable year ending after June 30, 1950, then the computation under section 444 (c) (1) (relating to the determination of total assets) shall be made by reference to the last day of such base period, and the 12-month period referred to in section 444 (c) (2) (relating to the interest adjustment) shall be the 12-month period ending with the last day of such base period. See section 461 (d).

(2) Where a corporation a party to the Part II transaction commenced business during the 36-month period ending on the last day of the base period of the acquiring corporation and the Part II transaction occurred during the base period of the acquiring corporation, the acquisition of facilities by that corporation shall be treated, for the purpose of section 444, as though they constituted an addition or additions to facilities within the meaning of section 444 (b) and § 40.444-2. In such a case, the rules prescribed in subparagraph (1) of this paragraph and in § 40.462-3 (b) and (d) shall be applicable for the purpose of determining whether or not the acquiring corporation meets the requirements of section 444.

(3) In the case of a Part II transaction other than one described in section 461 (a) (1) (E), where subsequent to the date of the transaction there is an addition or additions to its facilities or a replacement of all or part of its existing facilities within the meaning of section 444 (b) and § 40.444-2, the acquiring corporation shall be entitled to determine its average base period net income under section 444 if it qualifies under such section after the application of the rules prescribed in subparagraph (1) of this paragraph and in § 40.462-3 (b) and (d).

(4) Except to the extent provided in subparagraph (2) of this paragraph, an acquiring corporation shall not be deemed, for the purpose of section 444, to have made an addition or additions to its facilities or to have replaced all or part of its facilities solely by reason of the additions or replacements to its facilities resulting from the execution of a Part II transaction.

(5) An acquiring corporation shall also be entitled to apply section 444 to the extent provided in § 40.462-3 (c), re-

lating to a Part II transaction involving corporations each of which was previously entitled to the benefits of section 442 (d), 443, 444, 445, or 446.

(b) *Part II transactions described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction described in section 461 (a) (1) (E), the acquiring corporation shall be entitled to compute its average base period net income under section 444 only—

(i) To the extent provided in § 40.462-3 (c); or

(ii) If there was, after the date of the transaction, an addition or additions to its facilities or a replacement of all or part of its existing facilities by the acquiring corporation within the meaning of section 444 (b) and § 40.444-2, and if the acquiring corporation qualifies under section 444 after the application of the rules prescribed in paragraph (a) (1) of this section, and in § 40.462-3 (b) and (e). In applying the rules of paragraph (a) (1) of this section, there shall be available to the acquiring corporation in determining its average base period net income under section 444 only such portion of each item of the component corporation's experience prior to the transaction as is allocable to the properties of such component corporation transferred to the acquiring corporation. Such portion shall be determined in a manner consistent with that used in the allocation to the acquiring corporation under section 462 (i) and § 40.462-9 of the excess profits net income of the component corporation.

(2) For special rules with respect to a Part II transaction described in section 461 (a) (1) (E) involving a transfer to an acquiring corporation not created incident to the transaction, or involving a transfer by more than one component corporation to an acquiring corporation, see § 40.461-7 (b).

§ 40.462-7 *Application of section 445—(a) Part II transactions other than a transaction described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), which occurred during the base period of the acquiring corporation, such acquiring corporation shall be entitled to compute its average base period net income under section 445, in the manner provided therein, if the requirements of such section are satisfied after the application of the rules provided in § 40.462-3 (b) and (d). In such a case, for the purpose of the computations under section 445 (see § 40.445-2), the taxable year of the acquiring corporation in which it is deemed to have commenced business under section 461 (d) (see § 40.461-4) and its two immediately succeeding taxable years shall be considered to be its first three taxable years.

(2) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), which occurred after the close of the base period of the acquiring corporation, if the requirements of section 445 are satisfied after the application of the rules provided in § 40.462-3 (b) and (d), the average base period net income of the acquiring corporation after the transaction shall be determined, for the purpose of

section 445, by whichever of the following three methods is applicable:

(i) Where the transaction occurs after the close of the third taxable year ending after the actual commencement of business of both the component corporation and the acquiring corporation (other than an acquiring corporation created incident to the transaction), the average base period net income of the acquiring corporation after the transaction shall be determined, in lieu of the manner provided by section 445, by adding together the average base period net income of the acquiring corporation and of the component corporation as separately determined under section 445 in each instance as of the first day of the fourth taxable year of the corporation; or

(ii) Where the transaction occurs prior to the close of the third taxable year ending after the actual commencement of business of either the acquiring corporation or the component corporation, but after the close of the third such taxable year of one such corporation, the average base period net income of the acquiring corporation after the transaction shall be determined, in lieu of the manner provided by section 445, by adding together (a) the average base period net income determined under section 445 as of the first day of the fourth such taxable year of the corporation in business for more than three taxable years at the time of the transaction, and (b) an average base period net income for the corporation not in business for three taxable years at the time of the transaction, computed under section 445 as though the day immediately prior to the transaction were the first day of such corporation's fourth taxable year; or

(iii) Where the transaction occurs prior to the close of the third taxable year after the actual commencement of business of both the acquiring corporation and the component corporation, the average base period net income of the acquiring corporation after the transaction shall be determined by the method specified in section 445. In such a case, for the purpose of the computations under section 445 (see § 40.445-2), the taxable year of the acquiring corporation in which it is deemed to have commenced business under section 461 (d) (see § 40.461-4) and its two immediately succeeding taxable years shall be considered to be its first three taxable years. In making such computation under section 445, the net capital addition or reduction specified in section 445 (c) shall be the net capital addition or reduction of the acquiring corporation determined under the principles of section 463 and § 40.463-1.

(3) An acquiring corporation shall also be entitled to apply section 445 to the extent provided in § 40.462-3 (c), relating to a Part II transaction involving corporations each of which was previously entitled to the benefits of section 442 (d), 443, 444, 445, or 446.

(b) *Part II transactions described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction described in section 461 (a) (1) (E), which occurred during the base period of the acquiring corporation, such acquiring corporation

shall be entitled to compute its average base period net income under section 445, in the manner provided therein, if the requirements of such section are satisfied after the application of the rules provided in § 40.462-3 (b) and (e). In such a case, for the purpose of the computations under section 445 (see § 40.445-2), the taxable year of the acquiring corporation in which it is deemed to have commenced business under section 461 (d) (see § 40.461-4) and its two immediately succeeding taxable years shall be considered to be its first three taxable years.

(2) In the case of a Part II transaction described in section 461 (a) (1) (E), which occurred after the close of the base period of the acquiring corporation, if the requirements of section 445 are satisfied after the application of the rules provided in § 40.462-3 (b) and (e), the average base period net income of the acquiring corporation after the transaction shall be determined, for the purpose of section 445, by whichever of the following methods is applicable:

(i) Where the transaction occurred after the close of the third taxable year ending after the actual commencement of business of the component corporation, the average base period net income of the acquiring corporation after the transaction shall be that portion of the average base period net income of the component corporation, determined under section 445, which is allocable to the acquiring corporation under the rules of section 462 (i) and § 40.462-9; or

(ii) Where the transaction occurs prior to the close of the third taxable year ending after the actual commencement of business of the component corporation, the average base period net income of the acquiring corporation after the transaction shall be determined by the methods specified in section 445 after the application of the rules prescribed in paragraph (a) (2) (iii) of this section. In applying the rules of paragraph (a) (2) (iii) of this section, there shall be available to the acquiring corporation in determining its average base period net income under section 445 only such portion of each item of the component corporation's experience prior to the transaction as is allocable to the properties of such component corporation transferred to the acquiring corporation. Such portion shall be determined in a manner consistent with that used in the allocation to the acquiring corporation under section 462 (i) and § 40.462-9 of the excess profits net income of the component corporation. For the purpose of the computations under section 445 (see § 40.445-2), the taxable year of the acquiring corporation in which it is deemed to have commenced business under section 461 (d) (see § 40.461-4) and its two immediately succeeding taxable years shall be considered to be its first three taxable years.

(3) For special rules with respect to a Part II transaction described in section 461 (a) (1) (E) involving a transfer to an acquiring corporation not created incident to the transaction, or involving a transfer by more than one component

corporation to an acquiring corporation, see § 40.461-7 (b).

§ 40.462-8 *Application of section 446—*
(a) *Part II transactions other than a transaction described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), which occurred prior to the close of the base period of the acquiring corporation, the acquiring corporation shall be entitled to compute its average base period net income under section 446 if the requirements of such section are satisfied after the application of the rules provided in § 40.462-3 (b) and (d).

(2) An acquiring corporation shall also be entitled to apply section 446 to the extent provided in § 40.462-3 (c), relating to a Part II transaction involving corporations each of which was previously entitled to the benefits of section 442 (d), 443, 444, 445, or 446.

(b) *Part II transactions described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction described in section 461 (a) (1) (E), the acquiring corporation shall be entitled to compute its average base period net income under section 446 only—

(i) To the extent provided in § 40.462-3 (c); or

(ii) If the transaction occurred during the base period of the acquiring corporation, and if the acquiring corporation qualifies under section 446 after the application of the rules prescribed in § 40.462-3 (b) and (e).

(2) For special rules with respect to a Part II transaction described in section 461 (a) (1) (E) involving a transfer to an acquiring corporation not created incident to the transaction, or involving a transfer by more than one component corporation to an acquiring corporation, see § 40.461-7 (b).

§ 40.462-9 *Allocation rules in the case of Part II transactions described in section 461 (a) (1) (E)—(a) General rule.*

(1) In the case of a Part II transaction described in section 461 (a) (1) (E) (that is, a transaction in which a part, as distinguished from all or substantially all, of the properties of a component corporation is transferred to an acquiring corporation, or in which all or substantially all of the properties of a component corporation are transferred to two or more acquiring corporations), the base period experience of the component corporation immediately prior to the transaction is allocated among the corporations in business after the transaction in proportion to the ratio that the fair market value of the assets (including both tangible and intangible assets) of the component corporation which are held immediately after the transaction by each of the corporations which were parties to the transaction, bears to the fair market value of the total assets (including both tangible and intangible assets) of the component corporation as they existed immediately prior to the transaction. This general rule of allocation is used in determining that part of the excess profits net income, or substitute excess profits net income if computed under section 442 (c), of the component corporation for any month prior

to the transaction which may be used after the transaction by a surviving component corporation or, in recomputing its excess profits net income under section 462 (b), by the acquiring corporation subject, for the taxable year of the transaction, to the principles described in § 40.461-3 (c). This rule of allocation is also used in determining that portion of an alternative average base period net income determined under sections 442 (d), 443, 444, 445, or 446, to which the component corporation was entitled immediately prior to the transaction which may be availed of by the acquiring corporation under the rules set forth in §§ 40.462-3 to 40.462-8, inclusive. This rule is also applied whenever it is appropriate under such sections to allocate some particular item of the component corporation's base period experience prior to the Part II transaction, for example, its total assets, gross receipts, gross income, payroll, or net income. For rules of allocation as to net capital additions or reductions, see section 463 and § 40.463-1, and as to base period capital additions, see section 464 and § 40.464-1.

(2) For the purpose of subparagraph (1) of this paragraph, a determination of the fair market value of the properties of the component corporation immediately prior to the transaction described in section 461 (a) (1) (E) and the fair market value of the properties of the component corporation held after the transaction by each of the corporations which are parties to the transaction, may be made by agreement between all persons (corporate or otherwise) which are parties to the transaction, where the Commissioner agrees thereto. The following rules are applicable to any such agreement:

(i) The agreement shall be in writing, shall fully describe the transaction involved, shall set forth in detail the facts upon which the parties rely in the determination of the fair market value of the properties, and shall be signed by each party to the Part II transaction.

(ii) Subject to subsequent approval by the Commissioner, a taxpayer which has made such an agreement may compute its tax on its return pursuant to such agreement, providing that the original agreement (or a duplicate original) is attached to the return. If the return is filed prior to the agreement, the original agreement (or a duplicate original) shall be attached to a claim for refund if the application of the agreement results in an overpayment, or to an amended return if the application of the agreement does not result in an overpayment.

(iii) In any case in which such an agreement is approved by the Commissioner, the fair market value of the properties and the allocation of the excess profits net income or average base period net income determined in such agreement shall be binding upon all parties to such agreement for the taxable year for which the determination is made and for all subsequent taxable years.

(3) In no case shall the aggregate of the allocated portions of the excess profits net income be in excess of 100 percent of the excess profits net income of the component corporation immediately

prior to the transaction. Similarly, the aggregate of the allocated portions of the average base period net income shall not exceed 100 percent of the average base period net income of the component corporation immediately prior to the transaction. This limitation shall apply in the case of any other item which is allocated among the parties.

(b) *Alternative rule.* (1) In lieu of the allocation provided in paragraph (a) of this section, based on the fair market value of the properties, an allocation of base period experience may be made on the basis of the actual base period experience of the properties transferred to the acquiring corporation and of the properties retained by the component corporation, if all the parties to the transaction agree thereto and if it is established to the satisfaction of the Commissioner that such an allocation fairly represents an identifiable base period experience of each such group of assets transferred or retained. The following rules are applicable to any such agreement:

(i) The agreement shall be in writing, shall fully describe the transaction involved, shall set forth in detail the facts upon which the taxpayers rely in the determination of the base period experience of the properties transferred or retained and in the determination of the allocations based thereon, and shall be signed by each party to the Part II transaction.

(ii) The alternative rule of allocation shall only be available where the transferred assets and the retained assets each constituted, at all times involved in such allocations, a going business unit for which adequate and separate records were maintained.

(iii) Subject to subsequent approval by the Commissioner, a taxpayer which has made such an agreement may compute its tax on its return pursuant to such agreement, providing that the original agreement (or a duplicate original) is attached to the return. If the return is filed prior to the agreement, the original agreement (or a duplicate original) shall be attached to a claim for refund if the application of the agreement results in an overpayment, or to an amended return if the application of the agreement does not result in an overpayment.

(iv) In any case in which such an agreement is approved by the Commissioner, the allocations of base period experience determined in such agreement shall be binding upon all parties to such agreement for the taxable year for which the determination is made and for all subsequent taxable years.

(2) In no case shall the aggregate of the allocated portions of the excess profits net income or average base period net income exceed 100 percent of the excess profits net income or average base period net income, as the case may be, of the component corporation immediately prior to the transaction, unless the component corporation is a partnership and the transaction occurred before December 1, 1950. Thus, only in the case of a partnership in such a transaction may more than 100 percent of the excess profits net income of the component corporation be allocated to one party

to the transaction by reason of a deficit in excess profits net income allocable to another party to the transaction.

§ 40.462-10 Limitations under section 462 (j) (1) in case of certain stock acquisitions—(a) In general. (1) Section 462 (j) (1) is designed to prevent certain duplications in base period income and transferred capital additions and reductions in certain cases where after December 31, 1945, assets of the taxpayer (or of a corporation which later becomes its component) are transferred for stock in another corporation which later becomes a component of the taxpayer (or where assets of the component corporation are transferred for stock in the taxpayer). Section 462 (j) (1) contemplates that, after the Part II transaction, the excess profits net income of the corporation whose stock was acquired (including its excess profits net income determined under section 462 (c) (1) (B) or (d) (2) (B)), attributable to the acquired stock, for any month or part thereof before the acquisition of its stock shall be excluded in determining the taxpayer's average base period net income with reference to the recomputations provided under Part II. Similar exclusions are set forth in (d), below, with respect to other items involved in such recomputations of the base period experience of the component corporation. The adjustment under section 462 (j) (1) shall be made in the cases described in this section, and in all other cases to which section 462 (j) (1) may be applicable (including cases where assets of the component corporation are transferred for stock in the taxpayer), in the manner consistent with the principles underlying such described cases.

(2) Except to the extent that duplication of experience occurs, no adjustment is necessary under section 462 (j) (1)—

(i) Where stock of the component corporation is acquired directly from the component corporation; or

(ii) Where stock of the component corporation is acquired through a bona fide long-term increase in the capital structure of the acquiring corporation made in conjunction with and for the purpose of such acquisition, and where it is established to the satisfaction of the Commissioner that the transaction is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income or excess profits tax. A bona fide long-term increase in the capital structure within the meaning of this subparagraph (whether an increase in equity capital or in borrowed capital as defined in section 439 (b)) shall be deemed to have occurred only to the extent that such increase is reflected in the capital structure throughout the period beginning with the time such increase is originally made and ending with the close of the taxable year for which the tax is computed. For the purpose of determining whether such increase is reflected in the capital structure, proper adjustment shall be made to eliminate the effect of any loss occurring after the original increase is made, and, in the case of such determination as of any time during a taxable year, the

determination shall be made without regard to the earnings and profits of such taxable year. If the increase in capital structure is the result of a Part II transaction, this subparagraph and § 40.462-9 (b) (1) (ii) shall be applied in the light of the facts applicable both to the taxpayer and to the component corporation in such transaction. For the purpose of this subparagraph, an increase in the capital structure does not result from the conversion of inadmissible assets into admissible assets or from the accumulation of earnings and profits prior to the beginning of the first taxable year which begins after the date of the acquisition.

If the stock of the component corporation is acquired partly in the manner described in this paragraph and partly in another manner, the adjustment under section 462 (j) (1) shall be made to the extent the acquisition is made in such other manner. See paragraph (c) (4) of this section.

(3) The rules for the application of section 462 (j) (1) for the purpose of computing under Part II any average base period net income under the general average method (see section 435 (d) and section 462 (a)), under the alternative based on growth (see section 435 (e) and section 462 (c)), and under sections 442 through 446 and 462 (d) through (h) (see §§ 40.462-3 through 40.462-8) are set forth in this section. As to determination of excess profits net income for the purpose of section 462 (b) (2) (for any vacant month) under the limitations of section 462 (j) (1), see § 40.462-1 (b) (3) (ii). As to adjustment under section 462 (j) (1) of the net capital addition or reduction, see § 40.463-1 (e), and as to adjustment under section 462 (j) (1) of the base period capital addition, see § 40.464-1 (e). For treatment of cases involving sections 442 through 446 and section 462 (d) through (h), see paragraph (d) of this section.

(b) *Examples.* The general application of section 462 (j) (1) for the purpose of section 435 (d) or (e) may be illustrated by the following examples:

Example (1). The A Corporation and the B Corporation commenced business before January 1, 1946, and make their income tax returns on the calendar year basis. The A Corporation sold certain assets for cash, and on January 1, 1947, it used such cash to purchase all of the stock of the B Corporation from the stockholders of the B Corporation. On December 31, 1949, the A Corporation acquired all of the assets of the B Corporation in a Part II transaction. In determining the A Corporation's average base period net income under section 435 (d) or (e), the excess profits net income (or deficit) of the A Corporation will be determined under section 462 (b) without regard to the excess profits net income (or deficit) of the B Corporation for 1946.

Example (2). The C Corporation and the D Corporation commenced business before January 1, 1946, and make their income tax returns on the calendar year basis. The C Corporation sold certain assets for cash, and on January 1, 1951, it used such cash to purchase all of the stock of the D Corporation from the stockholders of the D Corporation. On December 31, 1951, the C Corporation acquired all of the assets of the D Corporation in a Part II transaction. In applying section 462 (b) or (c) in determining the average base period net income of the C Cor-

poration, section 462 (j) (1) requires the exclusion of the D Corporation's entire experience for the base period, and also for the additional period up to June 30, 1950, for certain cases under section 435 (e). The D Corporation's base period capital addition and its net capital addition or reduction for 1950 are also required to be excluded. See §§ 40.463-1 and 40.464-1.

Example (3). The E Corporation commenced business before January 1, 1946, and makes its income tax returns on the calendar year basis. The F Corporation was organized on January 10, 1948. On January 15, 1948, the F Corporation issued its stock and long-term bonds for cash, and on the same day, it used such cash to acquire all of the stock of the E Corporation from the stockholders of the E Corporation. On January 1, 1951, the F Corporation acquired all of the assets of the E Corporation in a Part II transaction. In determining the F Corporation's average base period net income under section 435 (d) or (e), based on a recomputation of its excess profits net income under section 462 (b), section 462 (j) (1) does not require the elimination of any part of the excess profits net income (or deficit) of the E Corporation for any part of its base period. See paragraph (a) (2) of this section. Under section 464, however, the F Corporation will not be allowed any base period capital addition for the cash paid in for its stock and bonds which was used in acquiring the stock of the E Corporation. See § 40.464-1.

Example (4). The G Corporation commenced business before January 1, 1946. The H Corporation was organized on January 15, 1948, and on the same day it issued its capital stock to the G Corporation in return for cash which was not obtained by the G Corporation in a transaction described in paragraph (a) (2) (ii) of this section. Shortly thereafter the H Corporation acquired the stock of the I Corporation from the stockholders of the I Corporation in return for the cash received from the G Corporation. The I Corporation had commenced business before January 1, 1946. Each corporation makes its income tax returns on the calendar year basis. On January 1, 1950, the G Corporation acquired all of the assets of the H Corporation and of the I Corporation in a Part II transaction. In determining the G Corporation's average base period net income under section 435 (d) or 435 (e), based on a recomputation of its excess profits net income under section 462 (b), section 462 (j) (1) requires the exclusion of the excess profits net income (or deficit) of the I Corporation for 1946 and 1947. A similar exclusion applies with respect to the H Corporation. See § 40.462-1 (b) (3) (ii). Under section 464, the H Corporation will not be allowed any base period capital addition for the money paid in by the G Corporation in return for the stock of the H Corporation. See § 40.464-1.

(c) *Special rules—(1) Partial acquisitions of stock.* In cases in which the taxpayer does not at one time or at any time prior to the Part II transaction acquire all of the other corporation's stock, only that part of the component corporation's base period experience before the acquisition which is attributable to the stock so acquired is to be excluded in computing the taxpayer's average base period net income under section 435 (d) or (e), based on a recomputation of its excess profits net income under section 462 (b). In cases in which the component corporation had a fixed number of shares of only one class of stock outstanding at all times prior to the Part II transaction, the portion of the component corporation's experience to be excluded under section 462 (j) (1) with respect to any part of the base period

(and of the additional period through June 30, 1950, in certain cases under section 435 (e)), prior to the day of any such acquisition is an amount which bears the same ratio to the whole of the component corporation's experience for such part of such period as the number of shares of such stock acquired by the taxpayer after such part, and not disposed of prior to the Part II transaction, bears to the aggregate number of such shares outstanding at the time of the acquisition of such stock. If any of such shares of stock, whether acquired before or after the beginning of the base period, were disposed of prior to the Part II transaction, the shares disposed of shall, for the purpose of this computation, be deemed to be those most recently acquired. The adjustment under section 462 (j) (1) in cases described in this paragraph may be illustrated by the following examples:

Example (1). The J Corporation and the K Corporation commenced business before January 1, 1946, and make their income tax returns on the calendar year basis. The outstanding capital stock of the K Corporation consists of 1,000 shares, all of one class. On January 1, 1947, the J Corporation purchased for cash 510 shares of such stock from the stockholders of the K Corporation. The purchase was not of a type described in paragraph (a) (2) of this section. On December 31, 1951, the J Corporation issued stock in exchange for the balance of the stock of the K Corporation and acquired all of the assets of the K Corporation in a Part II transaction. For the purpose of computing the J Corporation's average base period net income under section 435 (d) or (e), based on a recomputation of its excess profits net income under section 462 (b), 51 percent of the K Corporation's excess profits net income (or deficit) for 1946 is to be excluded under section 462 (j) (1).

Example (2). Assume the same facts as in example (1), above, and the additional fact that on January 1, 1948, the J Corporation purchased for cash (which purchase was not of the type described in paragraph (a) (2) of this section) 340 additional shares of the K Corporation from the stockholders of the latter, making its total stock holding in the K Corporation 850 shares prior to the issuance of the J Corporation's own stock for the balance of the stock of the K Corporation and prior to the Part II transaction. There shall be excluded under section 462 (j) (1) an amount equal to 85 percent (51 percent plus 34 percent) of the K Corporation's excess profits net income (or deficit) for 1946 and 34 percent of its excess profits net income (or deficit) for 1947.

Example (3). Assume the same facts as in example (2) above, and the additional fact that on January 1, 1949, the J Corporation sold 350 shares of the K Corporation's stock to various individuals. Accordingly, immediately prior to the issuance of the J Corporation's own stock for the balance of the stock of the K Corporation and prior to the Part II transaction, the J Corporation will own 500 shares of the stock of the K Corporation acquired for assets since December 31, 1945. Therefore, 50 percent of the K Corporation's excess profits net income (or deficit) for 1946 will be excluded under section 462 (j) (1). No portion of such experience for 1947, 1948, or 1949 will be excluded since the 350 shares sold are presumed to include all of the 340 shares acquired on January 1, 1948 (as in example (2)), and only 10 shares of the 510 shares acquired on January 1, 1947.

Example (4). Assume the same facts as in example (1), (2), and (3), except that the original acquisition of 510 shares of the K Corporation's stock occurred prior to Janu-

ary 1, 1946. No adjustment will be necessary under section 462 (j) (1) because the 350 shares disposed of on January 1, 1949, are deemed to be out of the most recently acquired shares, including in this case all of the shares acquired since December 31, 1945, that is, the 340 shares acquired on January 1, 1948.

(2) *More than one class of stock.* Where the corporation whose stock is acquired has at the time of such acquisition more than one class of stock outstanding and the taxpayer does not, prior to the Part II transaction, acquire all of the stock of all classes for assets (other than its own stock), the experience for the base period (and for the additional period through June 30, 1950, in certain cases under section 435 (e)) of the component corporation which is to be excluded under section 462 (j) (1) must be determined upon the basis of the earnings which may be attributed to each class of stock. Where preferred stock is nonvoting and is also limited and preferred as to dividends, the base period excess profits net income may be allocated first to the preferred stock on the basis of the prescribed dividend rate per share. If the only other class is common stock, the balance of such excess profits net income may be allocated to the common stock. The portion of such base period excess profits net income which is attributable to the stock owned by the acquiring corporation is that portion of such base period excess profits net income allocated to the class to which such stock belongs proportionate to the number of shares of such class acquired by the acquiring corporation after December 31, 1945. This rule may be illustrated by the following example:

Example. The L Corporation commenced business before January 1, 1946, and makes its income tax returns on the calendar year basis. It has had outstanding at all times the following shares: 5,000 shares of non-voting preferred stock of a par value of \$100 per share, limited and preferred as to dividends to the extent of \$6 per share annually; and 10,000 shares of no-par value common stock possessing sole voting power.

On January 1, 1948, the M Corporation purchased for cash (which purchase was not of a type described in (a) (2), above) 6,000 shares of the L Corporation's common stock from the stockholders of the L Corporation. The excess profits net income of the L Corporation for 1946 and 1947 was \$100,000 each year. Of this amount, \$30,000, representing the prescribed dividend rate of \$6 a share on 5,000 shares, is allocable to the preferred stock. Of the balance of \$70,000 which is allocable to the common stock, 60 percent (the ratio of the 6,000 shares of common stock acquired by the M Corporation since December 31, 1945, to the total of 10,000 shares of such stock outstanding), or \$42,000, will be considered attributable to the stock so acquired by the M Corporation. Therefore, if the M Corporation subsequently acquired all of the assets of the L Corporation in a Part II transaction (no stock of the L Corporation having been purchased or disposed of in the interval), \$42,000 of the L Corporation's excess profits net income for 1946 and 1947 is to be excluded under section 462 (j) (1) in computing the average base period net income of the M Corporation under section 435 (d) or (e), based on a recomputation of its excess profits net income under section 462 (b). If the L Corporation had a deficit in excess profits net income for either 1946 or 1947, or for both, such deficit would be considered attributable solely to

the common stock for purposes of determining the portion to be excluded under section 462 (j) (1).

(3) *Stock acquisition during year.* If the acquisition of stock by the acquiring corporation occurs during a taxable year of the component corporation, which taxable year is a factor in determining the base period experience of the component corporation, the exclusion required by section 462 (j) (1) will apply, after the determination of the amount of the component corporation's excess profits net income (or deficit) for each month of such taxable year, to the amount so determined for each month prior to the acquisition, and, in the case of the month in which the acquisition was made, will apply to the part of the amount for such month proportionate to the number of days of such month prior to the date of the acquisition. In the case of an acquisition of stock in the same taxable year in which the Part II transaction occurred, see § 40.461-3 (c) for the principles applicable to the determination of the excess profits net income (or deficit) for the taxable year and for each month thereof.

Example. Corporation N and Corporation O commenced business before January 1, 1946, and make their income tax returns on the calendar year basis. Corporation N purchased all of the stock of Corporation O from the latter's stockholders on July 12, 1948, in a transaction to which section 462 (j) (1) is applicable, and on December 31, 1952, it acquired all of the assets of Corporation O in a Part II transaction. The excess profits net income (or deficit) of Corporation O for each month in 1948 is first determined without regard to the exclusion required by section 462 (j) (1). Under sections 462 (j) (1), the excess profits net income (or deficit) of Corporation O for 1946, for 1947, and for each month in 1948 prior to July is not available to Corporation N. Similarly, there is not available to Corporation N so much of the excess profits net income (or deficit) of Corporation O for July 1948 as the number of days prior to the date of the acquisition is of the total number of days in such month (11/31 of the excess profits net income (or deficit) for July).

(4) *Stock acquired for stock.* Section 462 (j) (1) does not apply where stock of one corporation is acquired by another corporation solely in exchange for the latter's stock. In case stock is acquired in exchange partly for the acquiring corporation's own stock and partly for other property, section 462 (j) (1) is applicable only to the extent that the acquisition is attributable to such other property. Stock which has, in the hands of the taxpayer, a basis determined with reference to the basis of stock previously acquired by the issuance of the taxpayer's own stock shall be considered as having been acquired in consideration of the issuance of the taxpayer's own stock. These rules may be illustrated by the following examples:

Example (1). Corporation P acquires, after December 31, 1945, stock in Corporation Q in exchange solely for the stock of Corporation P. In a subsequent nontaxable reorganization, Corporation P receives new shares of Corporation Q in exchange for the original shares. If the new shares take the basis of the original shares, the new shares are considered, for the purpose of section 462 (j) (1), to have been acquired for the stock of Corporation P, and such section is inapplicable.

Example (2). Corporations R and S commenced business before January 1, 1946. On January 1, 1947, Corporation R acquired all of the stock of Corporation S from the latter's stockholders in exchange for stock of Corporation R. On January 1, 1948, in a nontaxable reorganization, Corporation T was organized and acquired all the assets of Corporation S in exchange for Corporation T's stock. In connection with this reorganization, Corporation R exchanged its stock in Corporation S for all of the stock in Corporation T, and Corporation S was dissolved. On December 31, 1949, Corporation R acquired all of the assets of Corporation T in a Part II transaction. For the purpose of section 462 (j) (1), the stock in Corporation T acquired by Corporation R is regarded as having been acquired for its own stock and, therefore, no adjustment is required under section 462 (j) (1).

(5) **Multiple components.** Section 462 (j) (1) also applies in cases in which a component corporation (referred to as the "first corporation") of the taxpayer transfers assets for the stock in a corporation (referred to as the "second corporation") and both corporations become component corporations of the taxpayer (the second corporation becoming a component corporation either directly or as a component corporation of the first corporation). The statute also applies to any other corporation which becomes a component corporation of the taxpayer and which at the time of a stock acquisition by the taxpayer or first corporation (under the circumstances described in section 462 (j) (1) (A) or (B)) was connected, directly or indirectly, through stock ownership with the corporation the stock of which was acquired. In the case of such a corporation connected through stock ownership, the statute applies regardless of the manner of acquisition of the stock of such connected corporation held at such time (for example, whether or not acquired for a consideration other than the issuance of stock). The statute also applies regardless of the date before such time that the corporation holding such stock, directly or indirectly, acquired such stock of such connected corporation. That is, it is immaterial whether the stock of such connected corporation held at such time was acquired before, on, or after December 31, 1945, as long as such stock was acquired before the time the acquisition of stock of the corporation to which it was so connected occurred in a transaction described in section 462 (j) (1) (A) or (B). In the case of any such corporation connected through stock ownership at such time, the amount of its excess profits net income (or deficit) which is to be eliminated under section 462 (j) (1) is to be determined by reference to that part of such amount which is attributable to the period prior to such time and which is attributable to the stock held, directly or indirectly, at such time, and not disposed of thereafter, by the corporation the stock of which was acquired at such time by the taxpayer or first corporation. Such experience to be eliminated is to be attributed to the period prior to such time and to such stock so held upon the basis of the principles previously stated in this section. To the extent that the stock of a corporation (later to

become a component corporation) was not so held at such time but was subsequently acquired, after December 31, 1945, by the taxpayer or another corporation (a first or second corporation), for assets of the latter, the base period experience of such corporation is to be excluded in accordance with the rules previously set forth in this section for excluding the experience of a component corporation when the latter's stock is acquired after December 31, 1945, for such assets by the taxpayer. The application of these rules in such cases is illustrated by the following examples:

Example (1). The U, V, W, and X Corporations commenced business before January 1, 1946, and make their income tax returns on the calendar year basis. The V Corporation commenced business on January 1, 1945, and issued all of its stock to the stockholders of the W Corporation for the stock of the latter. On January 1, 1947, the V Corporation purchased for cash (which purchase was not of a type described in paragraph (a) (2) of this section) all of the stock of the X Corporation from stockholders of the X Corporation. On January 1, 1948, the U Corporation purchased for cash (which purchase was not of a type described in paragraph (a) (2) of this section) all of the stock of the V Corporation from the latter's stockholders. On December 31, 1950, the U Corporation acquired all of the assets of the V, W, and X Corporations in a Part II transaction. In computing the average base period net income of the U Corporation under section 435 (d) or (e), based on a recomputation of its excess profits net income under section 462 (b), there is to be excluded under section 462 (j) (1) the experience of the V, W, and X Corporations for 1946 and 1947.

Example (2). Assume the same facts as in example (1), above, except that the V Corporation made the acquisition of the X Corporation's stock on January 1, 1949 (after the acquisition by the U Corporation of the stock of the V Corporation). There is to be excluded under section 462 (j) (1) the experience of both the V and W Corporations for 1946 and 1947 and the experience of the X Corporation for 1946, 1947, and 1948.

Example (3). The W, X, Y, and Z Corporations commenced business in 1945 and make their income tax returns on the calendar year basis. In July, 1945, the X Corporation acquired 50 percent of the stock of the Y Corporation from the stockholders of the latter. On January 1, 1947, the W Corporation purchased for cash (which purchase was not of a type described in paragraph (a) (2) of this section) all of the stock of the X Corporation from the latter's stockholders. On January 1, 1948, the X Corporation similarly purchased for cash the remaining 50 percent of the stock of the Y Corporation from other stockholders of the latter. On January 1, 1949, the Y Corporation similarly purchased for cash all of the stock of the Z Corporation from the latter's stockholders. On December 31, 1949, the W Corporation acquired all of the assets of the X, Y, and Z Corporations in a Part II transaction. In computing the average base period net income of the W Corporation under section 435 (d) or (e), based on a recomputation of its excess profits net income under section 462 (b), there is to be excluded all of the experience of the X Corporation for 1946. There is also to be excluded all of the experience of the Y Corporation for 1946, one-half of such experience being excluded because of the 50 percent ownership of its stock by the X Corporation at the time the stock of the X Corporation was acquired by the W Corporation and the other half being excluded because of the subsequent acquisition of the other 50 percent of the stock of the Y Corporation by the X Corpo-

ration. One-half of the experience of the Y Corporation for 1947 is also to be excluded because of the acquisition of one-half of its stock on January 1, 1948, by the X Corporation. The entire experience of the Z Corporation for 1946, 1947, and 1948 is to be excluded because of the acquisition from the stockholders of the Z Corporation on January 1, 1949, of the stock of the Z Corporation by the Y Corporation.

(d) **Application of section 462 (j) (1) for the purpose of section 462 (d) through (h).**—(1) **General rule.** The rules of paragraphs (a), (b), and (c) of this section, shall be applied except to the extent modified by subparagraph (2) of this paragraph, where after a Part II transaction following a stock acquisition covered by section 462 (j) (1) the acquiring corporation determines its average base period net income through the application of the provisions of section 462 (d) through (h). See §§ 40.462-3 through 40.462-8.

(2) **Special rules.** (i) In applying § 40.462-3 (c), relating to a Part II transaction involving corporations each of which was previously entitled to the benefits of section 442 (d), 443, 444, 445, or 446, no adjustment of the average base period net income separately computed for each such corporation immediately prior to the transaction is necessary under section 462 (j) (1) if the stock of the component corporation was acquired by the acquiring corporation before, and was held by it on, the day (or each day in the case of section 442 (d) or 446) for which total assets are determined for the purpose of determining the average base period net income of the acquiring corporation separately computed immediately prior to the transaction. If the stock is acquired by the acquiring corporation after such day (or after the last of such days in the case of section 442 (d) or 446), the average base period net income separately computed for the component corporation shall not be available to the acquiring corporation for the purpose of § 40.462-3 (c). If the acquiring corporation separately computes under section 442 (d) or 446 its average base period net income immediately prior to the transaction, and if the stock is acquired after the first and prior to the last day for which total assets are determined for the purpose of such computation under section 442 (d) or 446, then section 462 (j) (1) requires the elimination of so much of the average base period net income of the component corporation as the number of such days, for each of which total assets are determined, before the acquisition of the stock is to the total number of such days for each of which total assets are determined. See paragraph (c) (1) of this section for principles applicable under this paragraph in the case of partial acquisitions of stock, and see paragraph (c) (5) of this section for principles applicable under this paragraph in the case of multiple components.

(ii) In applying section 462 (d) (2) (B) in the case of an acquiring corporation entitled, immediately prior to the Part II transaction, to compute its average base period net income under section 442 (d), the exclusion required by section 462 (j) (1) shall apply to the excess

profits net income of the component corporation for the period ending on the last day, prior to the acquisition of the stock of the component corporation, for which total assets are determined for the purposes of section 442 (d).

(iii) In applying § 40.462-4 in the case of an acquiring corporation in a Part II transaction occurring during the base period of the acquiring corporation, section 462 (j) (1) requires that the total assets computed under section 442 (d) for any day prior to the acquisition of the component corporation's stock shall be determined after excluding the assets of the component corporation attributable to such stock. A corresponding exclusion shall be made in applying section 442 (d) with respect to interest paid or incurred by the component corporation prior to the last such day. Whether an abnormality occurring prior to the stock acquisition is significant and not trivial shall be determined after applying section 462 (j) (1) to the excess profits net income and the assets of the component corporation.

(iv) Section 40.462-5 (a) (2) and (3), relating to the case of an acquiring corporation in a Part II transaction occurring prior to the time the parties to such transaction were qualified to compute average base period net income under section 443, applies only where the acquisition of the component corporation's stock occurred on or prior to the date for which total assets are determined for the purpose of section 443 and § 40.462-5. Accordingly, in any case under § 40.462-5 (a) (2) and (3) no adjustment is required under section 462 (j) (1) in applying section 443 to the acquiring corporation.

(v) Section 40.462-3 (a) (1) and (2), relating to the case of an acquiring corporation in a Part II transaction occurring prior to the time the parties to such transaction were qualified to compute average base period net income under section 444, applies only where the acquisition of the component corporation's stock occurred on or prior to the date for which total assets are determined for the purpose of section 444 and § 40.462-6. Accordingly, in any case under § 40.462-6 (a) (1) and (2), no adjustment is required under section 462 (j) (1) in applying section 444 to the acquiring corporation.

(vi) In applying § 40.462-7 in the case of an acquiring corporation in a Part II transaction, if the amount of the total assets for the purpose of section 445 is determined under section 445 (b) (2) (A) or (c) (1) for a day prior to the acquisition of the component corporation's stock, section 462 (j) (1) requires the exclusion of so much of the total assets of the component corporation for such day as is attributable to the stock acquired. In computing the interest adjustment under section 445 (b), a corresponding exclusion shall be made with respect to the interest paid or incurred by the component corporation prior to the date of the acquisition of such stock. The net capital addition or reduction of the acquiring corporation determined for the purpose of section 445 (c) shall be adjusted so as to remove any addition or reduction of the component corpora-

tion, attributable to the stock acquired, which occurred prior to the acquisition of such stock.

(vii) In applying § 40.462-8 in the case of an acquiring corporation in a Part II transaction occurring during the base period of the acquiring corporation, section 462 (j) (1) requires that the total assets computed under section 446 (b) for any day prior to the acquisition of the component corporation's stock shall be determined after excluding the assets of the component corporation attributable to such stock. A corresponding exclusion shall be made in applying section 446 (b) with respect to interest paid or incurred by the component corporation prior to the last such day.

§ 40.462-11 *Limitation under section 462 (j) (2)*. (a) In the case of a Part II transaction occurring in a taxable year of the acquiring corporation ending after June 30, 1950, section 462 (j) (2) imposes a limitation for such taxable year in computing the acquiring corporation's excess profits credit based on income. In computing the acquiring corporation's average base period net income under section 435 (d) or (e) for such taxable year, there is available to the acquiring corporation only a proportionate part of the amount of the monthly excess profits net income (or deficit) of the component corporation which is otherwise available to the acquiring corporation under section 462 (b), (c), or (d). In computing the average base period net income of the acquiring corporation under § 40.462-3 (c) or under § 40.462-7 (a) (2) (i) or (ii) or (b) (2) (i) (which sections relate to certain cases in which the average base period net income of the component corporation, separately computed, is added to that of the acquiring corporation) there is available to the acquiring corporation only a proportionate part of the amount of the average base period net income of the component corporation which is otherwise available to the acquiring corporation under such sections. Such proportionate part shall be determined in each case by the ratio which the number of days in the taxable year of the acquiring corporation after the day of the transaction bears to the total number of days in such taxable year. In the computation of the excess profits credit based on income for subsequent taxable years, the limitations of section 462 (j) (2) are not applicable. Section 462 (j) (2) may be illustrated by the following example:

Example. On October 19, 1951, the X Corporation acquired all of the assets of the Y Corporation in a transaction described in section 461 (a). Both the X Corporation and the Y Corporation commenced business before January 1, 1946, and both corporations make their income tax returns on the calendar year basis. The Y Corporation had an excess profits net income of \$10,000 for each month in the calendar year 1946, a deficit in excess profits net income of \$500 for each month in the calendar year 1947, an excess profits net income of \$3,000 for each month in the calendar year 1948, and an excess profits net income of \$7,500 for each month in the calendar year 1949. In computing its average base period net income for 1951 under section 435 (d), based on a recomputation of its excess profits

net income under section 462 (b), the X Corporation shall include only one-fifth (73/365) of the above amounts, i. e., \$2,000 for each month in 1946, a deficit of \$100 for each month in 1947, \$600 for each month in 1948, and \$1,500 for each month in 1949. In computing the excess profits credit for 1952, and subsequent years, however, the X Corporation may include the entire amount of the excess profits net income and deficit in excess profits net income of the Y Corporation.

(b) If a corporation becomes an acquiring corporation in a taxable year ending after June 30, 1950, and if the taxpayer's average base period net income for the purpose of the excess profits credit for such taxable year is determined under §§ 40.462-4 through 40.462-8, other than in a case to which paragraph (a) of this section is applicable, the average base period net income of the taxpayer shall be computed by taking into account only a proportionate part of the amount of the total assets of the component corporation otherwise available to the acquiring corporation in such computation. If the total assets are determined for a day prior to the day of the Part II transaction, such proportionate part shall bear the same ratio to the total assets of the component corporation otherwise available to the acquiring corporation as the number of days in the taxable year of the acquiring corporation after the day of the Part II transaction bears to the total number of days in such taxable year. If the total assets are determined for the day of, or for a day subsequent to, the Part II transaction, there shall be excluded from such total assets an amount which is the same portion of the total assets of the component corporation acquired by the acquiring corporation in the Part II transaction as the number of days in the taxable year of the acquiring corporation prior to the day of the Part II transaction is of the total number of days in such taxable year. Appropriate adjustment shall be made in any case subject to the rules of this paragraph in which interest paid or incurred by the component corporation is taken into account in computing the average base period net income of the acquiring corporation. In applying § 40.462-7 (a) (2) (iii) or (b) (2) (ii), appropriate adjustment shall be made in any case in which the net capital addition or reduction of the acquiring corporation is determined for the purpose of section 445 (c) by reference to additions or reductions of the component corporation. In the computation of the excess profits credit based on income for subsequent taxable years, the limitations of section 462 (j) (2) are not applicable.

(c) A similar limitation applies in the case of a component corporation for the purpose of computing its excess profits credit for a taxable year of such component corporation ending after June 30, 1950, in which the Part II transaction occurs. See section 461 (c) (2) and (4) and § 40.461-3 (b) (2) and (4).

§ 40.462-12 *Partnerships and sole proprietorships.* In the case of a component corporation which is a partnership or a business owned by a sole proprietorship (see § 40.461-5), the com-

putations required under Part II and under the regulations in this part shall be made as though such partnership or such business owned by a sole proprietorship had been a corporation. See § 40.462-1 (b) (2) for examples of the adjustments required.

§ 40.462-13 Minimum average base period net income of acquiring corporation under Part II. Section 462 (1) provides for a minimum average base period net income in certain cases. In cases to which section 462 (1) is applicable, the average base period net income of the acquiring corporation shall not be less than either its average base period net income computed without regard, under Part II, to any of the qualified component corporations, or the average base period net income separately computed for any qualified component corporation. Section 462 (1) is applicable only in the case of a Part II transaction occurring in a taxable year of the acquiring corporation ending after June 30, 1950, and is applicable only if, at the beginning of the first taxable year of the acquiring corporation ending after June 30, 1950, and at all times thereafter until such transaction, either the acquiring corporation owned at least 75 percent of each class of stock of each of the qualified component corporations involved in the transaction, or one of such qualified component corporations owned at least 75 percent of each class of stock of the acquiring corporation and of each of the other qualified component corporations. The term "qualified component corporation", as used in this section, means a component corporation which was actually in existence and had actually commenced business at the beginning of the base period of the acquiring corporation. For the purpose of determining whether a corporation is a qualified component corporation, section 461 (d) does not apply. Section 462 (j) (1) does not require a reduction, by reason of the Part II transaction, of the minimum average base period net income to which the acquiring corporation is entitled under section 462 (1) and this section, but section 462 (j) (2) requires, for the taxable year in which the transaction takes place, a proration of the average base period net income of the qualified component corporation. In case the Part II transaction is a transaction described in section 461 (a) (1) (E), see § 40.461-7 (b).

§ 40.462-14 Treatment of abnormalities in income in taxable year. In the case of a Part II transaction occurring on or before December 31, 1950, the activities of the component corporation shall be treated as activities of the acquiring corporation for the purpose of applying section 456 to income, received or accrued by the acquiring corporation after the transaction, which is attributable to such activities for a taxable year of the component corporation which closed prior to or with the close of the base period of the acquiring corporation. In any such case, all income of the component corporation of the same class as the abnormal income received or accrued by the acquiring corporation, which income is income for a

taxable year of the component corporation prior to the Part II transaction, shall be treated under section 456 as income of the acquiring corporation.

PAR. 3. There is inserted immediately after section 463, the following:

§ 40.463-1 Net capital addition or reduction under Part II—(a) In general—

(1) Applicability of section. If a taxpayer acquires properties of a component corporation in a Part II transaction occurring in a taxable year of the taxpayer ending after June 30, 1950, and if the taxpayer's average base period net income for the purpose of its excess profits credit for any taxable year ending after the transaction is computed by application of Part II, then the net capital addition or net capital reduction of the acquiring corporation after the Part II transaction shall be computed for such taxable year under section 435 (g) with the application of this section. This section does not apply in the case of any Part II transaction occurring prior to the beginning of the acquiring corporation's first taxable year ending after June 30, 1950. In such a case, see § 40.464-1, relating to the acquiring corporation's base period capital addition. The rules provided in this section for determining the net capital addition and net capital reduction of the acquiring corporation after the Part II transaction differ, depending upon whether the Part II transaction is of a type described in section 461 (a) (1) (E). In the case of a component corporation which is a partnership or a business owned by a sole proprietorship, see § 40.462-12.

(2) Constructive taxable years of component corporation. If the Part II transaction occurred prior to July 1, 1950, the component corporation shall be deemed to have as many taxable years ending after the transaction as are necessary for it to have a first taxable year ending after June 30, 1950, and the taxable years of the component corporation ending after the date of the transaction shall, for the purpose of this section, be determined on the basis of the annual accounting period applicable to the component corporation immediately prior to the transaction.

Example. The A Corporation, which makes its income tax returns on the calendar year basis, acquires the properties of the C Corporation on April 1, 1950, in a Part II transaction. The C Corporation, prior to the transaction, made its income tax returns on the basis of a fiscal year ending July 31. The C Corporation (whether or not it remains in existence after the transaction and whether or not it maintains the same annual accounting period) is deemed to have a taxable year beginning August 1, 1949, and ending July 31, 1950, and the transaction is treated as having occurred in the first taxable year of the component corporation ending after June 30, 1950.

(b) Part II transactions other than a transaction described in section 461 (a) (1) (E). If the excess profits credit of an acquiring corporation, other than an acquiring corporation in a Part II transaction described in section 461 (a) (1) (E), is computed by application of Part II, the following rules shall apply in computing the net capital addition and

net capital reduction of the acquiring corporation:

(1) For the purpose of section 435 (g) (3) (A), in the case of the taxable year of the acquiring corporation in which the transaction occurs, if the transaction occurs in a taxable year of the component corporation ending after June 30, 1950, in determining the amount of money and property paid in for stock or as paid-in surplus or as a contribution to capital after the beginning of the taxable year of the acquiring corporation, there shall be included, beginning with the day after the transaction, the amounts of money and property paid in for the same purposes to the component corporation prior to the transaction and after the beginning of the taxable year of the component corporation in which such transaction occurred.

(2) For the purpose of section 435 (g) (4) (A), in the case of the taxable year of the acquiring corporation in which the transaction occurs, if the transaction occurs in a taxable year of the component corporation ending after June 30, 1950, there shall be included, beginning with the day after the transaction, the amount of the distributions not out of earnings and profits of the taxable year, made by the component corporation to its shareholders prior to the transaction and after the beginning of its taxable year in which such transaction occurred.

(3) For the purpose of section 435 (g) (3) (B) and (4) (B), in the case of the taxable year of the acquiring corporation in which the transaction occurs, if the transaction occurs in a taxable year of the component corporation ending after June 30, 1950, there shall be added to the acquiring corporation's daily capital addition beginning with the day of the transaction, the amount by which the component corporation's equity capital at the beginning of its taxable year in which the transaction occurs exceeds its equity capital as of the beginning of its first taxable year ending after June 30, 1950. In case this comparison of the component corporation's equity capital shows a decrease to have taken place, the amount of that decrease shall be reflected in the computation of the daily capital reduction of the acquiring corporation beginning with the day of the transaction.

(4) For the purpose of section 435 (g) (3) (B) and (4) (B), for taxable years of the acquiring corporation beginning after the transaction, there shall be added to the equity capital of the acquiring corporation at the beginning of the acquiring corporation's first taxable year ending after June 30, 1950—

(i) If the transaction occurs in a taxable year of the component corporation ending after June 30, 1950, the equity capital of the component corporation as of the beginning of the component corporation's first taxable year ending after June 30, 1950, or

(ii) If the transaction occurred in a taxable year of the component corporation ending before July 1, 1950, the equity capital of the component corporation determined as of the time immediately prior to the transaction.

(5) For the purpose of section 435 (g), in the case of the taxable year of the

acquiring corporation in which the transaction occurs, and in the case of subsequent taxable years, there shall be added to the daily borrowed capital of the acquiring corporation for the first day of its first taxable year ending after June 30, 1950, and to its original inadmissible assets—

(i) If the transaction occurs in a taxable year of the component corporation ending after June 30, 1950, the daily borrowed capital of the component corporation for the first day of its first taxable year ending after June 30, 1950, and the original inadmissible assets of the component corporation, respectively, or

(ii) If the transaction occurred in a taxable year of the component corporation ending before July 1, 1950, the daily borrowed capital of the component corporation determined as of the time immediately prior to the transaction, and the total of the inadmissible assets held by the component corporation immediately prior to the transaction, respectively.

(6) For the purpose of section 435 (g), in the case of the taxable year of the acquiring corporation in which the transaction occurs, the daily borrowed capital and the inadmissible assets of the acquiring corporation for each day of such taxable year preceding the day after the transaction shall be computed by adding to the daily borrowed capital and the inadmissible assets of the acquiring corporation the amount of the daily borrowed capital and the amount of the inadmissible assets, respectively, of the component corporation which are determined under subparagraph (5) (i) or (ii) of this paragraph, whichever is applicable.

(7) For the purpose of determining the amount referred to in section 435 (g) (4) (D) and (g) (6), for any day after the day of the transaction, the inadmissible assets of the acquiring corporation for the first day of its first taxable year ending after June 30, 1950, shall (for the purpose of section 435 (g) (6) (B)) be determined under subparagraph (5) of this paragraph and there shall be added (for the purpose of section 435 (g) (6) (A)) to the aggregate of the adjusted basis (for determining gain upon sale or exchange) of stock in members of a controlled group of which the acquiring corporation is a member, held by the acquiring corporation on the first day of its first taxable year ending after June 30, 1950,—

(i) If the transaction occurs in a taxable year of the component corporation ending after June 30, 1950, the aggregate of the adjusted basis (for determining gain upon sale or exchange) of stock in members of a controlled group, of which the component corporation is a member, held by the component corporation on the first day of its first taxable year ending after June 30, 1950, or

(ii) If the transaction occurred in a taxable year of the component corporation ending before July 1, 1950, the aggregate of the adjusted basis (for determining gain upon sale or exchange) of stock in members of a controlled group, of which the component corporation

is a member, held by the component corporation immediately prior to the transaction.

(8) For the purpose of determining the amount referred to in section 435 (g) (7) for any day after the day of the transaction (75 percent of which amount is taken into account under section 435 (g) (4) (E)), there shall be added to the amount of the indebtedness described in section 435 (g) (7) owed to the acquiring corporation for the first day of its first taxable year ending after June 30, 1950—

(i) If the transaction occurs in a taxable year of the component corporation ending after June 30, 1950, the amount of the indebtedness described in section 435 (g) (7) which was owed to the component corporation for the first day of its first taxable year ending after June 30, 1950, or

(ii) If the transaction occurred in a taxable year of the component corporation ending before July 1, 1950, the amount of the indebtedness described in section 435 (g) (7) which was owed to the component corporation immediately prior to the transaction.

(c) *Intercompany stockholdings, etc.* The computation of the net capital addition or reduction under section 435 (g) is subject to the following additional rules relating to cases involving intercorporate stock ownership, and contributions, distributions, stock purchases, and loans between parties to a Part II transaction or their shareholders:

(1) In computing the daily capital addition of the acquiring corporation under section 435 (g) (3) (A) for any day after the day of the Part II transaction, there shall be disregarded any amount paid in to one corporation, a party to the Part II transaction, which consisted of stock in another corporation a party to the Part II transaction, and there shall be disregarded any amount paid in by one such corporation to another such corporation.

(2) In computing the daily capital reduction of the acquiring corporation under section 435 (g) (4) (A) for any day after the day of the Part II transaction, there shall be disregarded any distribution made by one corporation, a party to the Part II transaction, which consisted of stock in another corporation a party to the Part II transaction, and there shall be disregarded any distribution made by one such corporation to another such corporation.

(3) In computing the daily capital addition of the acquiring corporation under section 435 (g) (3) (B), or the daily capital reduction of the acquiring corporation under section 435 (g) (4) (B), for any day after the day of the transaction, the equity capital of the acquiring corporation at the beginning of the taxable year and its equity capital at the beginning of its first taxable year ending after June 30, 1950, shall each be determined after excluding all stock of the component corporation held by the acquiring corporation at the beginning of each such year. In determining the amount with respect to the component corporation to be added under paragraph (b) (3) and (4) of this section for

the purpose of computing the acquiring corporation's daily capital addition or reduction, the equity capital of the component corporation as of any time for which equity capital is computed under paragraph (b) (3) or (4) of this section shall be determined after excluding all stock of the acquiring corporation, or of any other corporation a party to the Part II transaction, held by the component corporation as of such time.

(4) For the purpose of the computations under section 435 (g) (3) (C) and (g) (4) (C)—

(i) In determining the amount with respect to the component corporation to be added to the daily borrowed capital of the acquiring corporation under paragraph (b) (5) or (6) of this section, the daily borrowed capital of the component corporation, computed as of any time for which such daily borrowed capital is computed under paragraph (b) (5) or (6) of this section, shall be determined as if any indebtedness owed at such time by the component corporation to the acquiring corporation or to any other corporation which is a party to the Part II transaction were not borrowed capital within the meaning of section 439.

(ii) In the case of the taxable year in which the Part II transaction occurs, if the daily borrowed capital of the acquiring corporation for the first day of its first taxable year ending after June 30, 1950, includes an indebtedness for such day of the acquiring corporation to any corporation which is a party to the Part II transaction, then the computations under section 435 (g) (3) (C) and (g) (4) (C) shall be made, subject to the rules provided in paragraph (b) of this section and in subdivision (1) of this subparagraph in the following manner:

(a) The daily capital addition of the acquiring corporation under section 435 (g) (3) (C) for any day in such taxable year shall be 75 percent of the amount, if any, by which the daily borrowed capital of the acquiring corporation for such day (in lieu of its average borrowed capital for such taxable year) exceeds its daily borrowed capital for the first day of its first taxable year ending after June 30, 1950, and

(b) The daily capital reduction of the acquiring corporation under section 435 (g) (4) (C) for any day in such taxable year shall be 75 percent of the amount, if any, by which the daily borrowed capital for the first day of the acquiring corporation's first taxable year ending after June 30, 1950, exceeds its daily borrowed capital for such day (in lieu of its average borrowed capital for such taxable year).

For the purpose of such computation in the case of any day after the day of the Part II transaction, the daily borrowed capital of the acquiring corporation for the first day of its first taxable year ending after June 30, 1950, shall be determined as if any indebtedness for such day of the acquiring corporation to any corporation which is a party to the Part II transaction were not borrowed capital within the meaning of section 439.

(iii) In the case of any taxable year subsequent to the taxable year in which the Part II transaction occurs, in com-

puting the daily capital addition of the acquiring corporation under section 435 (g) (3) (C) or the daily capital reduction of the acquiring corporation under section 435 (g) (4) (C), the daily borrowed capital of the acquiring corporation for the first day of its first taxable year ending after June 30, 1950, shall be determined as if any indebtedness for such day of the acquiring corporation to any corporation which is a party to the Part II transaction were not borrowed capital within the meaning of section 439.

(5) In computing the daily capital reduction of the acquiring corporation under section 435 (g) (4) (D) for any day after the day of the Part II transaction, the stock of any corporation which is a party to the Part II transaction, held by the acquiring corporation on the first day of its first taxable year ending after June 30, 1950, shall not be considered stock referred to in section 435 (g) (6) (A), and shall not be considered an inadmissible asset for the purpose of the computation under section 435 (g) (6) (B). In determining the amount with respect to the component corporation to be added under paragraph (b) (7) of this section, for the purpose of computing the acquiring corporation's daily capital addition or reduction, the stock held by the component corporation in the acquiring corporation or in any other corporation which is a party to the Part II transaction shall be disregarded in making the computations under paragraph (b) (7) of this section.

(6) In computing the daily capital reduction of the acquiring corporation under section 435 (g) (4) (E) for any day after the day of the transaction, loans by the acquiring corporation to another corporation, a party to the Part II transaction, shall not be considered indebtedness described in section 435 (g) (7) for the first day of the first taxable year ending after June 30, 1950. In determining the amount with respect to the component corporation to be added under paragraph (b) (8) of this section for the purpose of computing the acquiring corporation's daily capital reduction, loans by the component corporation to the acquiring corporation or to any other corporation which is a party to the Part II transaction shall not be considered indebtedness described in section 435 (g) (7).

(7) In computing the increase or decrease in inadmissible assets for the purpose of section 435 (g) (1) and (2)—

(i) In the case of any taxable year of the acquiring corporation subsequent to the taxable year in which the transaction occurs, the original inadmissible assets of the acquiring corporation and the amount added thereto under paragraph (b) (5) of this section shall each be computed without regard to any stock held by the acquiring corporation in the component corporation or in any other corporation a party to the Part II transaction, and without regard to any stock held by the component corporation in the acquiring corporation or in any other corporation a party to the Part II transaction;

(ii) In the case of the taxable year of the acquiring corporation in which the transaction occurs, if the original inadmissible assets of the acquiring corporation include an amount with respect to stock held by the acquiring corporation in the component corporation or in any other corporation a party to the Part II transaction, then the computation of the increase or decrease in inadmissible assets for the purpose of section 435 (g) (1) and (2) shall be made in the following manner:

(a) The increase in inadmissible assets for such taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily increases in inadmissible assets over the aggregate of the daily decreases in inadmissible assets, and

(b) The decrease in inadmissible assets for such taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily decreases in inadmissible assets over the aggregate of the daily increases in inadmissible assets.

The daily increase in inadmissible assets shall be computed for each day of the taxable year, and shall be the excess of the daily amount attributable to the inadmissible assets for such day over the amount of the original inadmissible assets. The daily decrease in inadmissible assets shall be computed for each day of the taxable year, and shall be the excess of the original inadmissible assets over the daily amount attributable to the inadmissible assets for such day. For the purpose of the computation of the daily increase or daily decrease in inadmissible assets for any day of the taxable year, the daily amount attributable to inadmissible assets for any day prior to the day after the transaction shall be computed with the application of paragraph (b) (6) of this section and the original inadmissible assets shall be computed with the application of paragraph (b) (5) of this section. For the purpose of the computation of the daily increase or daily decrease in inadmissible assets for any day after the day of the transaction, the original inadmissible assets shall be computed under the rule provided in subdivision (i) of this subparagraph (relating to taxable years subsequent to the taxable year of the transaction).

(8) If the acquiring corporation acquired stock in the component corporation in a transaction described in § 40.462-10 (a) (2), that is, in a transaction not covered by section 462 (j) (1), proper adjustment shall be made by decreasing the daily capital addition or increasing the daily capital reduction, as the case may be, for each day after the day of the Part II transaction, to the extent necessary so that such amounts shall not reflect the transaction described in § 40.462-10 (a) (2). For example, assume that the A Corporation (the acquiring corporation) and the C Corporation (the component corporation) each makes its income tax returns on the calendar year basis, that (in a transaction described in § 40.462-10 (a) (2)) the A Corporation issued its stock on June 1, 1950, for \$1,000,000 in cash and on the same day used such cash to

acquire all the stock of the C Corporation, and that the A Corporation acquired all the properties of the C Corporation on December 1, 1950, in a Part II transaction. In computing the daily capital addition of the A Corporation for each day of 1950 after December 1, 1950, the \$1,000,000 paid in for stock on June 1, 1950, shall be disregarded. In computing the equity capital of the A Corporation on January 1, 1951, for the purpose of comparing such amount with its equity capital on January 1, 1950, such equity capital on January 1, 1951, shall be reduced by \$1,000,000 (the amount paid in for stock in the transaction described in § 40.462-10 (a) (2)). The same adjustment (a decrease of \$1,000,000) shall be made for such purpose in computing equity capital for the first day of each subsequent taxable year.

(9) To the extent that stock of a component corporation was acquired in an exchange for other than stock of the acquiring corporation, within the meaning of section 462 (j) (1) (see § 40.462-10 (c) (4) for rules applicable in determining when stock is considered acquired for stock), the basis of the assets of the component corporation shall be redetermined as provided in section 470, whether or not more than 80 percent of the stock of the component corporation is acquired, and such redetermined basis shall be used where appropriate for all computations under section 435 (g), section 463, and this section. See the example in paragraph (e) of this section.

(d) *Special rules under sections 443 and 445—(1) Rules under section 443.* If the average base period net income is determined under section 443, section 443 (d) provides that no net capital addition or reduction shall be allowed in computing the excess profits credit for the qualifying taxable year. If the qualifying taxable year ends after June 30, 1950, section 443 (d) provides that the net capital addition or reduction for subsequent taxable years shall be determined by reference to the first day of the first taxable year following the qualifying taxable year rather than by reference to the first day of the first taxable year ending after June 30, 1950. These rules of section 443 (d) apply in computing the net capital addition or reduction of the acquiring corporation if its average base period net income is computed under section 443. If such average base period net income is computed under § 40.462-3 (c) (relating to cases in which the Part II transaction occurs after all parties to the transaction are entitled to an alternative average base period net income), the special rules of section 443 (d) shall be applicable only with respect to the items of capital addition and reduction of each corporation entitled to apply section 443.

(2) *Rules under section 445.* If the average base period net income is determined under section 445, then section 445 (e) provides that no net capital addition or reduction shall be allowed in computing the excess profits credit for the first three taxable years of the taxpayer. Such net capital addition or reduction is, however, taken into account in computing total assets for the pur-

pose of section 445 (c). If the third taxable year ends after June 30, 1950, section 445 (e) provides that the net capital addition or reduction for subsequent taxable years shall be determined by reference to the first day of the fourth taxable year of the taxpayer instead of by reference to the first day of its first taxable year ending after June 30, 1950. These rules of section 445 (e) apply in computing the net capital addition or reduction of the acquiring corporation if its average base period net income is computed under section 445. See § 40.462-7 (a) (2) (ii) for certain cases in which the day before the Part II transaction is treated as though it were the first day of the fourth taxable year. If such average base period net income is computed under § 40.462-3 (c) (relating to cases in which the Part II transaction occurs after all parties thereto are entitled to an alternative average base period net income), the special rules of section 445 (e) shall be applicable only with respect to the items of capital addition and reduction of each corporation entitled to apply section 445.

(e) *Limitations under section 462 (j)* (1). In order to prevent duplication under section 463 in computing the net capital addition or reduction of the acquiring corporation in the case of a Part II transaction following a stock acquisition covered by section 462 (j) (1), which stock acquisition occurred after the beginning of the first taxable year of the component corporation ending after June 30, 1950, section 462 (j) (1) requires that each item with respect to the component corporation determined under paragraphs (b) and (c) of this section shall be properly adjusted to eliminate the portion of the transferred items of capital addition and reduction of the component corporation attributable to the stock acquired.

Example (1). If the A Corporation (the acquiring corporation) and the C Corporation (the component corporation) each makes its income tax returns on the calendar year basis, if the A Corporation purchases 30 percent of the stock of the C Corporation on April 1, 1951, and if the Part II transaction takes place on September 1, 1951, then any items arising before April 1, 1951, described in paragraph (b) (1) of this section (that is, money or property paid in for stock, etc., to the C Corporation during the taxable year and before April 1, 1951), or paragraph (b) (2) of this section (that is, distributions not out of earnings and profits of the taxable year, made by the C Corporation during the taxable year and before April 1, 1951), shall be available to the A Corporation under paragraph (b) (1) and (2) of this section only to the extent of 70 percent thereof, that is, the 30 percent of each such item attributable to the stock purchased after such items arose shall be eliminated. Similarly, 30 percent of the amount determined under paragraph (b) (3) of this section (the excess of equity capital of the C Corporation on January 1, 1951, over its equity capital on January 1, 1950), shall not be available to the A Corporation. Each of the items under paragraph (b) (4), (5), (6), (7), and (8) of this section (relating to equity capital, daily borrowed capital, inadmissible assets, controlled group stock, and controlled group indebtedness, as of January 1, 1950) shall be available to the acquiring corporation in an amount equal to 70 percent of such item, that is, 30 percent of each such item shall be eliminated.

Example (2). The facts in this example are the same as in example (1), except that the stock acquisition occurred on April 1, 1950, instead of on April 1, 1951. In this case, no adjustment is required with respect to the items under paragraph (b) (1) and (2) of this section since such items arose in a taxable year subsequent to the taxable year of the acquisition. Each of the items under paragraph (b) (4), (5), (6), (7), and (8) of this section (relating to equity capital, daily borrowed capital, inadmissible assets, controlled group stock, and controlled group indebtedness, as of January 1, 1950) are adjusted in the same manner as in Example (1), that is, 30 percent of each such item is eliminated. However, in this case, the amount available to the A Corporation for its taxable year 1951 under paragraph (b) (3) of this section (that is, the capital addition or reduction based on the difference between the equity capital of the C Corporation on January 1, 1951, and its equity capital on January 1, 1950) is determined by using, in lieu of the equity capital of the C Corporation on January 1, 1950, an amount equal to the sum of 70 percent of its equity capital on January 1, 1950, plus so much of its equity capital on April 1, 1950, computed for this purpose after the redetermination of the basis of the assets of the C Corporation under the principles of section 470, as is attributable to the stock acquired on April 1, 1950, by the A Corporation. Similarly, for this purpose, the equity capital of the C Corporation on January 1, 1951, would be determined under the principles of section 470 which determination will reflect the cost basis of the stock. See paragraph (c) (9) of this section and section 463 (a) (12).

(f) *Part II transactions described in section 461 (a) (1) (E)*—(1) *In general.* In the case of a Part II transaction described in section 461 (a) (1) (E), the net capital addition or reduction of the acquiring corporation is computed in the same manner as in the case of other Part II transactions, except that there shall be taken into account by the acquiring corporation only such portion of the transferred items of capital additions and reductions of the component corporation as is allocable to the properties transferred. The following rules are applicable in the case of a Part II transaction described in section 461 (a) (1) (E):

(i) The items described in paragraph (b) (1), (2), and (3) of this section, relating to money and property paid in for stock, etc., distributions not out of earnings and profits of the taxable year, and increase or decrease in equity capital, shall not be taken into account by the acquiring corporation. The capital changes reflected in such items are, instead, reflected under the rules set forth in subdivisions (ii) and (iv) of this subparagraph.

(ii) There shall be taken into account by the acquiring corporation, in lieu of the amount determined under paragraph (b) (4) of this section (relating to the equity capital of the component corporation for the first day of its first taxable year ending after June 30, 1950), an amount which is such portion of the amount determined under paragraph (b) (4) of this section as the equity capital transferred to the acquiring corporation in the Part II transaction is of the equity capital of the component corporation immediately prior to the transaction. For the purpose of section 435 (g) (3) (B) and (g) (4) (B), the equity

capital of the acquiring corporation for the first day of the taxable year in which the transaction occurs (which equity capital is compared with the equity capital of the acquiring corporation, determined with the application of the preceding sentence, for the first day of its first taxable year ending after June 30, 1950) shall be determined as of the day following the transaction in lieu of the first day of such taxable year.

(iii) There shall be taken into account by the acquiring corporation, in lieu of each of the items determined under paragraph (b) (5), (6), (7), and (8) of this section an amount with respect to each such item which is such portion of that item as the amount of such item transferred to the acquiring corporation in the transaction bears to the amount of such item determined immediately prior to the transaction.

(iv) In the case of the taxable year of the acquiring corporation in which the transaction occurs, for the purpose of any comparison required under section 435 (g) between amounts for such taxable year and amounts determined as of the first day of the taxpayer's first taxable year ending after June 30, 1950, the amounts for such first day shall be the amounts required to be taken into accounts for such first day of the acquiring corporation under subdivisions (ii) and (iii) of this subparagraph.

(2) *Special rules.* See § 40.461-7 (b) for special rules applicable in the case of a Part II transaction described in section 461 (a) (1) (E) which involves a transfer to an acquiring corporation by two or more component corporations, or which involves a transfer to an acquiring corporation not created incident to the transaction.

§ 40.463-2 *Capital changes in case of successive Part II transactions.*—If one corporation becomes a component of a second corporation in a taxable year ending after June 30, 1950, and if the second corporation thereafter becomes a component of a third corporation, the net capital addition or reduction of the third corporation shall be determined under § 40.463-1 by computing the items of transferred capital addition and reduction of the second corporation after such items have been adjusted under the provisions of § 40.463-1 by reference to the first corporation. Such adjustment shall be made whether or not the second corporation computed its average base period net income by application of Part II. The first corporation shall be treated as a party to the later Part II transaction for the purpose of the application under this section of § 40.463-1 (c) relating to intercompany stockholdings, etc.

PAR. 4. There is inserted immediately after section 464, the following:

§ 40.464-1 *Base period capital additions under Part II*—(a) *In general*—(1) *Applicability of section.* If a taxpayer acquires properties of a component corporation in a Part II transaction occurring after the beginning of the second taxable year of the taxpayer preceding its first taxable year ending after June 30, 1950, and if the taxpayer's average

base period net income for the purpose of its excess profits credit for any taxable year ending after the transaction is computed by application of Part II, then the base period capital addition of the acquiring corporation shall be computed for such taxable year under section 435 (f) with the application of this section. The base period capital addition shall be allowed to an acquiring corporation computing its average base period net income with respect to Part II only if such acquiring corporation computes its average base period net income under the general average method provided in section 435 (d) with reference to section 462 (b) or, in certain instances, under section 442 (c) with reference to section 462 (d). See section 435 (f) (3). If the Part II transaction occurs prior to the beginning of the second taxable year preceding the first taxable year of the acquiring corporation ending after June 30, 1950, no base period capital addition of the component corporation is available to the acquiring corporation. See examples in § 40.461-3 (d) and (e). The rules for determining the base period capital addition of the acquiring corporation after the Part II transaction differ, depending upon whether the Part II transaction is of a type described in section 461 (a) (1) (E), and depending upon the taxable year in which the transaction occurs. In the case of a component corporation which is a partnership or a business owned by a sole proprietorship, see § 40.462-12.

(2) *Constructive taxable years of component corporation.* If the Part II transaction occurred prior to July 1, 1950, the component corporation shall be deemed to have as many taxable years ending after the transaction as are necessary for it to have a first taxable year ending after June 30, 1950, and the taxable years of the component corporation ending after the date of the transaction shall for the purpose of this section be determined on the basis of the annual accounting period applicable to the component corporation immediately prior to the transaction. Wherever it is necessary under section 464 to determine a yearly base period capital for any such constructive taxable year beginning after the Part II transaction, such yearly base period capital shall be deemed to be an amount equal to the yearly base period capital of the component corporation determined as of the day of the transaction in the same manner as if such day were the first day of a taxable year.

Example. The A Corporation, which makes its income tax returns on the calendar year basis, acquires the properties of the C Corporation on April 1, 1950, in a Part II transaction. The C Corporation, prior to such transaction, made its income tax returns on the basis of a fiscal year ending June 30. For the purpose of determining the base period capital addition of the C Corporation, all or part of which will be added under paragraph (b) (1) of this section to the base period capital addition of the A Corporation, the taxable year of the C Corporation beginning July 1, 1949, in which year the Part II transaction takes place, will be deemed to end June 30, 1950, and the C Corporation will be deemed to have another taxable year beginning July 1, 1950, and ending June 30,

1951, which taxable year will be deemed to be its first taxable year ending after June 30, 1950. The yearly base period capital for the constructive taxable year beginning July 1, 1950, and ending June 30, 1951, will be deemed to be an amount equal to the yearly base period capital of the C Corporation determined as of April 1, 1950, the day of the transaction. This yearly base period capital will be compared under section 435 (f) (2) with the yearly base period capital of the C Corporation for the fiscal year beginning July 1, 1949 (which year is deemed to end June 30, 1950), that is, with the amount determined as of July 1, 1949, and with the yearly base period capital for the fiscal year beginning July 1, 1948, and ending June 30, 1949, that is, with the amount determined as of July 1, 1948.

(b) *Part II transactions other than a transaction described in section 461 (a) (1) (E).* (1) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), which occurs during or after the first taxable year of the acquiring corporation ending after June 30, 1950, for the purpose of section 435 (f) and § 40.435-6, the base period capital addition of the acquiring corporation for the taxable year in which the transaction occurs shall be the sum of (i) the base period capital addition of the acquiring corporation, and (ii) an amount which bears the same ratio to the base period capital addition of the component corporation as the number of days in the taxable year of the acquiring corporation after the transaction bears to the total number of days in such taxable year in which the transaction occurs. The base period capital addition of the acquiring corporation for any taxable year thereafter shall be the aggregate of the base period capital addition of the acquiring corporation and the base period capital addition of the component corporation.

(2) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), which occurred during the first taxable year of the acquiring corporation immediately preceding its first taxable year ending after June 30, 1950, the base period capital addition of the acquiring corporation shall be computed after (i) adding to the yearly base period capital of the acquiring corporation for its taxable year immediately preceding its first taxable year ending after June 30, 1950, the yearly base period capital of the component corporation for its taxable year immediately preceding its first taxable year ending after June 30, 1950, and (ii) adding to the yearly base period capital of the acquiring corporation for its second taxable year preceding its first taxable year ending after June 30, 1950, the yearly base period capital of the component corporation for its second taxable year preceding its first taxable year ending after June 30, 1950.

(3) In the case of a Part II transaction other than a transaction described in section 461 (a) (1) (E), which occurred during the second taxable year of the acquiring corporation preceding its first taxable year ending after June 30, 1950, its base period capital addition shall be computed after adding to its yearly base period capital for such sec-

ond preceding taxable year, the yearly base period capital of the component corporation for the second taxable year preceding the component corporation's first taxable year ending after June 30, 1950.

(c) *Intercompany stockholdings, etc.* (1) In computing under section 464 the yearly base period capital of either the acquiring corporation or the component corporation for any taxable year, the equity capital and inadmissible assets of such corporation shall be determined after excluding all of the stock of the other such corporation, and of any other corporation a party to the Part II transaction, held by such corporation on the day for which equity capital and inadmissible assets are determined. In determining daily borrowed capital, and the interest adjustment under section 435 (f) (5), for the purpose of computing yearly base period capital in the case of either the acquiring or the component corporation, any indebtedness of one such corporation to the other such corporation, or to any other corporation a party to the Part II transaction, shall not be considered borrowed capital. Similarly, in computing the amount of loans to members of a controlled group for the purpose of determining the yearly base period capital, any indebtedness to one such corporation owed by the other corporation, or by any other corporation a party to the Part II transaction, shall be excluded.

(2) There shall be excluded from the base period capital addition of the acquiring corporation for any taxable year ending after the day of the Part II transaction so much of the base period capital addition for such taxable year as is attributable to assets obtained for the purpose of acquiring stock in the component corporation in a transaction described in § 40.462-10 (a) (2), that is, in a transaction not covered by section 462 (j) (1).

(3) There shall be excluded from the base period capital addition of the acquiring corporation for any taxable year ending after the Part II transaction so much of the base period capital addition for such taxable year as is attributable to assets obtained by the component corporation (whether as equity or borrowed capital) from the acquiring corporation, or from any other corporation a party to the Part II transaction, after the beginning of the second taxable year of the component corporation preceding its first taxable year ending after June 30, 1950.

(4) To the extent that stock of a component corporation was acquired in an exchange for other than stock of the acquiring corporation within the meaning of section 462 (j) (1) (see § 40.462-10 (c) (4) for rules applicable in determining when stock is considered acquired for stock), the basis of the assets of the component corporation shall be redetermined as provided in section 470, whether or not more than 80 percent of the stock of the component corporation is acquired, and such redetermined basis shall be used where appropriate for all computations under section 435 (f), section 464, and this section.

(d) *Limitations under section 462 (j)*
 (1). In order to prevent duplication under section 464 in computing the base period capital addition in the case of a Part II transaction following a stock acquisition covered by section 462 (j) (1), which stock acquisition occurred after the beginning of the second taxable year of the acquiring corporation preceding its first taxable year ending after June 30, 1950, section 462 (j) (1) requires that in any case under paragraph (b) (2) or (3) of this section in which the yearly base period capital of the component corporation is determined as of the day of such stock acquisition or a preceding day, such yearly base period capital shall be reduced by an amount which is such portion thereof as the stock acquired by the acquiring corporation on or after such day is of the total stock of the component corporation at the time of such acquisition. The same reduction shall be made in the following cases in which the yearly base period capital of the component corporation is determined as of a day subsequent to the day of such stock acquisition:

- (1) In any case in which such yearly base period capital is to be added under the provisions of paragraph (b) (2) or (3) of this section to the yearly base period capital of the acquiring corporation determined as of a day preceding the day of such stock acquisition; and
- (2) In any case under paragraph (b) (1) of this section in which such stock acquisition occurs after the first day of the acquiring corporation's first taxable year ending after June 30, 1950.

Further adjustment shall be made to the extent proper in any case under paragraph (b) (1) of this section in which there would be no base period capital addition of the acquiring corporation if computed without regard to the base period capital addition of the component corporation.

Example (1). The A Corporation (the acquiring corporation) and the C Corporation (the component corporation) each makes its income tax returns on the calendar year basis. The A Corporation purchases 30 percent of the stock of the C Corporation on April 1, 1951, and acquires all of the properties of the C Corporation in a Part II transaction on September 1, 1951. In computing the base period capital addition of the C Corporation, which is added to the base period capital addition of the A Corporation under the rules of paragraph (b) (1) of this section only 70 percent of the yearly base period capital of the C Corporation for 1948, for 1949, and for 1950 shall be taken into account, that is, there shall be eliminated the 30 percent of each such yearly base period capital attributable to the stock purchased after the day (January 1 of each such year) for which yearly base period capital is determined.

Example (2). The facts in this example are the same as in Example (1), except that the stock acquisition occurred on April 1, 1949, instead of on April 1, 1951. In this case, no adjustment is required with respect to the yearly base period capital for 1950 since that amount is determined as of January 1, 1950, a day subsequent to the day of the stock acquisition. The same adjustment is required with respect to the yearly base period capital for 1948 and 1949 as that required in Example (1), since both such

amounts are determined as of a day preceding the day of the stock acquisition. Assume further that the A Corporation paid \$300,000 for the stock, that it would have no base period capital addition if computed without regard to the base period capital addition of the C Corporation, and that it would have a \$125,000 base period capital addition (also computed without regard to the base period capital addition of the C Corporation) if it had not acquired the stock. The base period capital addition of the C Corporation must be further reduced by \$175,000, the amount by which the stock acquisition is not reflected in the base period capital addition of the A Corporation.

Example (3). The facts in this case are the same as in Example (1), except that the stock acquisition occurred on April 1, 1949, and the Part II transaction occurred on September 1, 1949. In determining the yearly base period capital of the C Corporation for 1948 and 1949, which amounts will be added to the yearly base period capital of the A Corporation for 1948 and 1949, respectively, only 70 percent of each such amount with respect to the component corporation shall be available to the acquiring corporation, that is, 30 percent of each such amount shall be eliminated.

(e) *Part II transactions described in section 461 (a) (1) (E).* (1) In the case of a transaction described in section 461 (a) (1) (E) which occurs during or after the first taxable year of the component corporation ending after June 30, 1950, for the purpose of section 435 (f), the base period capital addition of an acquiring corporation shall be an amount which bears the same ratio to the base period capital addition of the component corporation as the fair market value of the assets transferred to such acquiring corporation in the transaction bears to the fair market value of the assets of the component corporation immediately prior to the transaction.

(2) In the case of a transaction described in section 461 (a) (1) (E) which occurred during a taxable year of the component corporation which is a taxable year preceding its first taxable year ending after June 30, 1950, the yearly base period capital of the acquiring corporation for the year in which the transaction occurred shall be computed as of the day following the transaction.

(3) In case the transaction described in subparagraph (2) of this paragraph occurred in a taxable year of an acquiring corporation which is its first taxable year ending after June 30, 1950, such acquiring corporation's base period capital addition shall be computed as follows:

- (i) The acquiring corporation's yearly base period capital for its first taxable year immediately preceding its first taxable year ending after June 30, 1950, shall consist of a portion of the yearly base period capital of the component corporation for the first day of the taxable year in which such transaction occurred, and
- (ii) The acquiring corporation's yearly base period capital for its second taxable year preceding its first taxable year ending after June 30, 1950, shall consist of a portion of the yearly base period capital of the component corporation for the first day of its first taxable year immediately preceding its taxable year in which the transaction occurred;

Such portion in each instance being determined by the ratio which the fair market value of the assets transferred to the acquiring corporation in the transaction bears to the fair market value of the assets of the component corporation immediately prior to the transaction.

(4) In case the transaction described in subparagraph (2) of this paragraph occurred during the taxable year of an acquiring corporation immediately preceding its first taxable year ending after June 30, 1950, then, for the purpose of computing the base period capital addition of such acquiring corporation, its yearly base period capital for its second taxable year preceding its first taxable year ending after June 30, 1950, shall consist of a portion of the yearly base period capital of the component corporation for the first day of the taxable year of the component corporation in which such transaction occurred. Such portion shall be determined by the ratio which the fair market value of the assets transferred to the acquiring corporation in the transaction bears to the fair market value of the assets of the component corporation immediately prior to the transaction.

(5) See § 40.461-7 (b) for special rules applicable in the case of a Part II transaction described in section 461 (a) (1) (E) which involves a transfer to an acquiring corporation by two or more component corporations, or which involves a transfer to an acquiring corporation not created incident to the transaction.

§ 40.464-2 *Base period capital addition in case of successive Part II transactions.* If one corporation becomes a component of a second corporation, and if the second corporation thereafter becomes a component of a third corporation, the base period capital addition of the third corporation shall be determined under § 40.464-1 by computing the second corporation's yearly base period capital and its base period capital addition (whichever is available to the third corporation) after such items have been adjusted under the provisions of § 40.464-1 by reference to the first corporation. Such adjustment shall be made whether or not the second corporation computed its average base period net income by application of Part II. The first corporation shall be treated as a party to the later Part II transaction for the purpose of the application under this section of § 40.464-1 (c) relating to intercompany stockholdings, etc.

(53 Stat. 32; 26 U. S. C. 62. Interpret or apply 64 Stat. 1191-1210; 26 U. S. C. 461-465)

FRED S. MARTIN,
 Acting Commissioner of
 Internal Revenue.

Approved: November 13, 1951.

THOMAS J. LYNCH,
 Acting Secretary of the Treasury.

[F. R. Doc. 51-13740; Filed, Nov. 13, 1951;
 12:45 p. m.]

TITLE 29—LABOR**Subtitle A—Office of the Secretary of Labor****PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION****MISCELLANEOUS AMENDMENTS**

This part is amended as follows:

1. In § 5.1 immediately following the words "act of September 23, 1950, 64 Stat. 967," the following is added: "and the Defense Housing and Community Facilities and Services Act of 1951, Public Law 139, 82d Congress."

2. The following is added at the end of § 5.1: "Defense Housing and Community Facilities and Services Act of 1951, Public Law 139, 82d Congress."

3. A new paragraph, designated paragraph (c), is added to § 5.5 to read as follows:

(c) In contracts for construction financed through loans or grants made pursuant to title III of the Defense Housing and Community Facilities and Services Act of 1951, the Agency Head shall cause or require inclusion of the following stipulation:

The wages of every laborer and mechanic employed by the contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. (Sec. 208, 64 Stat. 975, Pub. Law 139, 82d Cong.; 20 U. S. C. Sup. 278)

Signed at Washington, D. C., this 7th day of November 1951.

MAURICE J. TOBIN,
Secretary of Labor.

[F. R. Doc. 51-13654; Filed, Nov. 14, 1951; 8:45 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX**Chapter III—Office of Price Stabilization, Economic Stabilization Agency**

[Ceiling Price Regulation 93]

CPR 93—CONSTRUCTION AND RELATED SERVICES AND SALES OF INSTALLED MATERIALS

Pursuant to the Defense Production Act of 1950, as amended (Pub. Law 774, 81st Cong., Pub. Law 96, 82nd Cong.), Executive Order 10161, (15 F. R. 6105), and Economic Stabilization Agency General Order No. 2 (16 F. R. 738), this Construction and Related Services and Sales of Installed Materials Regulation is hereby issued.

STATEMENT OF CONSIDERATIONS

This regulation establishes ceiling prices, ceiling markups and ceiling fees for sales of construction services, and services involving the sales of materials and their installation or erection. It applies to the sales of these services under lump sum, cost-plus fixed fee, and cost-plus fixed fee with guaranteed limit

contracts, to sales on a time and materials or an hourly rate basis, and to the sales of items or materials and equipment together with the construction services required to install or erect them.

The transactions covered are those in which the seller furnishes labor service or any combination of labor, materials and service under contract for building construction, highway construction, heavy construction, railroad construction and various types of miscellaneous construction. The transactions covered also include shop fabrication by the installer of materials to be installed in a construction job, the sale of installation or erection service by a manufacturer who installs or erects a commodity manufactured by him and charges separately for such installation or erection; and any transaction involving both the manufacture and installation or erection of a commodity with a single charge for the entire service.

Each type of construction service may involve the activities of contractors in specialized branches of industry such as plumbing, heating, air conditioning, electrical work, sheet metal work, carpentry, and the like in all of the many construction trades. Accordingly, this regulation is devised to afford methods of general application to all segments of the industry by which contractors and others supplying services of labor, or labor and commodities, installation or erection services, may price their services easily and uniformly and according to the traditional methods used by them in estimating and furnishing services, materials and equipment.

The construction services rendered by the construction industry as a whole vitally affect the national economy. In dollar volume of business, the construction industry ranks high in dollar value in the Nation's economy. The Department of Commerce has found that total construction activity amounted to 36.6 billion dollars in 1950. New construction accounted for 27.9 billion dollars of this total; 8.7 billion dollars represented expenditures for maintenance and repairs. The same source reports that gross private investment in the industry during the second quarter of 1951 amounted to 22.3 billion dollars on an annual basis. This is almost as great as the amount of money invested in the manufacture of all durable consumers' equipment during the same period.

The economic significance of the industry is also impressive when considered in relation to gross national product and gross private domestic investment in the country. During the first and second quarters of 1951, the value of investment in the industry amounted to 7.5 percent and 6.8 percent, respectively, of the gross national product. In the same periods, it amounted to 40 percent and 35 percent of the Nation's gross private domestic investment. A program of price stabilization, therefore, should include an action designed to stabilize prices of construction services.

The Office of Price Stabilization on January 26, 1951, issued the General Ceiling Price Regulation which, with certain exceptions, fixed the ceiling prices of all commodities and of services

at the highest price charged by the seller during the base period, December 19, 1950 to January 25, 1951, inclusive. At the time of the issuance of the General Ceiling Price Regulation it was recognized that the issuance of one regulation covering millions of prices of sellers in thousands of industries could not be expected adequately to cover the multitude of problems arising in day to day pricing, and that an adequate system of price control necessarily would require from time to time the issuance of regulations designed for the needs of particular industries.

Ceiling Price Regulation 34 was issued May 11, 1951; that Regulation separately covered the field of services and, to the extent of its applicability, superseded the General Ceiling Price Regulation in the services field. CPR 34 retained the formal provisions of the GCPR for the determination of ceiling prices, including the base period December 19, 1950 through January 25, 1951. Although not specifically designed to meet the needs of the construction industry, CPR 34 did offer an advantage over the GCPR in that it provided for the use of a pricing method. Soon after the release of CPR 34, however, it became evident that the pricing theory of that regulation was not realistic as far as the construction industry was concerned. To reconcile the traditionally slender margins and great element of risk peculiar to the operations of a large proportion of the construction industry with the necessity, under CPR 34, to absorb labor and (in most cases) material cost increases, was difficult in the extreme. Representatives of the industry contended that compliance with CPR 34—if not impossible—would, at the very least, involve great hardship.

To comply with the provisions of CPR 34, contractors were required to determine their ceiling price for each service by finding the highest price charged for the "same service" during the base period extending from December 19, 1950 through January 25, 1951. Industry spokesmen emphasized that a particular service is rarely supplied by a contractor more than once in the same form and under the same conditions. It was further emphasized that varying conditions of location, terrain, weather and other factors directly influence the price that must be charged for a construction service.

Construction contractors to some extent may be likened to manufacturers in that they use labor, materials and equipment to re-mold materials into a new form for use in a new function. The distinction ends there. Construction contractors cannot operate in a fixed, sheltered place. The source of their labor constantly changes; the equipment used by them is mobile and diverse in type and the jobs performed by them rarely are the same with respect to elements of labor, materials and related demands for service and equipment for any given job.

In a comparatively few instances where construction contractors are engaged in shop fabrication, the work is performed as a step toward installation in or on a structure.

Because of the nature of the industry as indicated above, it has been considered desirable to devise a method of pricing which will permit sellers of construction services to refer to current costs of labor and materials in pricing their individual services. This regulation, therefore, is issued to meet the specific needs of the construction industry. New or supplementary regulations tailored to the needs of the specialized branches of the industry will be issued if the need proves substantial or reasonable.

The pre-Korean base period used in this regulation is July 1, 1949 through June 24, 1950. Many of the activities within the industry are seasonal in nature. A period of a year's duration is chosen in order to provide for the factor of seasonal variation which is prevalent in various branches of the construction industry. The longer base period gives the construction contractor a wider range of choice in his selection of a "comparable contract" for use as a precedent under this regulation.

In general, the pricing theory of this regulation permits the seller of construction services to apply to his current cost of labor, materials, and equipment (not in excess of rates and ceilings approved or established by the Wage Stabilization Board and the Office of Price Stabilization), 9/10 of the highest percentage markup for profit which he had in effect for a comparable sale during the base period. He may apply to those current costs, his highest base period percentage markup for overhead without reduction.

The base period percentage markup for profit is reduced by 10 percent, because it has been determined that costs of construction labor and building materials have risen by 10 percent and 12 percent respectively since the outbreak of hostilities in Korea. It is estimated, therefore, that 9/10 of the pre-Korean percentage markup for profit will, when applied to these increased costs, result in approximately the same dollar and cents realization of profit as that which the seller of construction services enjoyed during the base period.

The base period percentage markup for overhead is not required to be reduced under this regulation if the seller of construction services can make and substantiate a separation of his total base period percentage markup into an applicable percentage representing profit and an applicable percentage representing his recovery of overhead expenses. This provision takes into consideration the increases in overhead expenses incurred subsequent to the base period.

The Director finds therefore that the ceiling prices established by this regulation are generally the equivalent of pre-Korea prices plus cost increases to date.

An exception to the general pricing theory of the regulation is made in the case of sales of labor services on the basis of an hourly rate charged to the purchaser. The ceiling charge for labor cannot, under this regulation, exceed the highest base period hourly charge plus the dollar and cents increase in the cost of that labor incurred by the seller subsequent to the base period. A further exception is made in the case of sales of construction services under cost-plus

fixed dollar fee contracts. The ceiling fixed dollar fee which may be charged under this regulation is the highest fee which was charged during the base period under a comparable contract.

The record keeping and reporting requirements of this regulation are, in the opinion of the Director of Price Stabilization, the least burdensome which can be imposed upon the construction industry consistent with the need to assure compliance and to support the OPS enforcement program.

In substance, persons covered are required to keep records necessary and sufficient to allow determination as to whether they have correctly computed ceiling prices; records showing the cost to them of labor, materials and other costs necessary to the performance of construction and installation contracts; and records showing charges made or the prices offered in connection with the sale of construction services during the base period and subsequent to the effective date of this regulation. Basic reports are required from contractors furnishing services and materials on an hourly rate, time and materials or installed sales basis. Where, due to subsequent cost increases, these contractors increase their ceiling hourly rates for labor services or increase their ceiling prices for sales of items on an installed sales basis, supplemental reports are required.

The General Ceiling Price Regulation and subsequent ceiling price regulations issued by the Office of Price Stabilization, including the manufacturers' regulations, have in general established ceiling prices for most of the commodities, raw and manufactured, used in the building construction industry and activities of other sellers of service, and commodities in other industries.

The Manufacturers' General Ceiling Price Regulation (CPR 22) and subsequent ceiling price regulations adopt as a basic principle the adjustment of pre-Korean price levels to take account of the increases in costs which have occurred since Korea. In the issuance of these regulations it was recognized that no system of price control can work effectively if each increase in costs is immediately and automatically translated into rising prices. Prices for the commodities most widely used by the persons covered by this regulation are controlled by other OPS regulations; the cost of labor to them is controlled by applicable Wage Stabilization Board regulations; while the markups over these costs are governed by the provisions of this regulation.

This regulation contains a saving provision allowing the seller of a construction service to continue his use of a ceiling price which he has properly established under CPR 34. If he elects to use a CPR 34 percentage markup, however, the seller may not then apply that higher percentage markup to current costs as provided in this regulation. The CPR 34 percentage markup must be applied to costs on the December 19, 1950 through January 25, 1951 level except as otherwise provided by CPR 34.

The possible need for tailored regulations designed to meet the specific needs of specialized branches of the construc-

tion industry is recognized. In the interim, however, it is believed that the methods now provided for the determination and establishment of ceiling prices, ceiling markups, and ceiling fees will tend to diminish the present difficulties encountered by persons covered by CPR 34.

Early in the preparation of this regulation, two formal meetings of the Industry Advisory Committee for the Construction Industry were held. The advisory committee represents a comprehensive cross section of the construction industry with regard to geographical distribution, distribution by size (dollar volume), and distribution by type of service offered. The recommendations of the committee have been given every possible consideration in the writing of the regulatory provisions of this regulation. Many informal meetings with industry and trade association representatives have been held to assure consistency with industry practices and usages.

It is the opinion of the Director of Price Stabilization that this regulation conforms with the requirements of the Defense Production Act of 1950, as amended, in that it does not establish ceiling prices lower than those prevailing under the regulation previously affecting the same area of industry, and does not establish ceiling prices below the levels prevailing in that area of industry during the period January 25 through February 24, 1951.

In general, this regulation does not operate to compel changes in business practices, cost practices, or methods established in the industry. To the extent that such changes are involved, the action has been found necessary to prevent circumvention or evasion of this regulation.

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APPENDIX A

Instructions for completing record recapitulation.

AUTHORITY: Sections 1 to 46 issued under sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154. Interpret or apply Title IV, 64 Stat. 803, as amended; 50 U. S. C. App. Sup. 2101-2110. E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.

INTRODUCTORY

SECTION 1. (a) Persons covered by this regulation. Except as provided in paragraph (b) of this section, any person who sells construction services (see definition in section 45) and any person who purchases construction services covered by this regulation (see section 2) is subject to it. The term "person" means an individual, corporation, partnership, association or any other organized group of persons, its legal successors or representatives; the governments of the United States, its territories and possessions, any State government, or any of the political subdivisions, or any agency of any of the foregoing; and includes specialty contractors and subcontractors as well as prime contractors.

(b) Exemption. Neither this regulation nor any other regulation heretofore or hereafter issued by OPS shall apply to the sale of construction services by a person who neither employs one or more employees nor employs one or more subcontractors. If at any time, however, a person who is exempted by this provision employs one or more employees or one or more subcontractors he is subject to this regulation and must comply with all of its provisions including the record-keeping and reporting requirements.

SEC. 2. Construction services covered—(a) Types of transactions. This regulation covers:

(1) Any transaction in which the seller furnishes labor service, or any combination of labor, materials and services under contract (express or implied) for building, highway, heavy, railroad and miscellaneous construction as explained and exemplified in paragraph (b) of this section. This includes the installation or incorporation of materials or equipment into a building, structure, or construction project, or on a right of way, either in new or additional construction, or otherwise; the removal of materials or equipment therefrom; or the repair, remodeling or alteration of an existing building or structure or construction project; the installation, modification and repair of production and processing facilities, whether or not connected with building construction.

(2) Shop fabrication by the installer of materials to be installed by him in con-

nection with any of the foregoing, except as provided in section 3.

(3) The sale of an installation or erection service, (not excepted by section 3) by a manufacturer, who installs or erects a commodity manufactured by him and charges separately for such installation or erection.

(4) Any transaction (not excepted by section 3) involving both the manufacture and installation or erection of a commodity with a single charge for the entire service. (In such case the charge for the manufactured commodity becomes a part of the total ceiling price established under this regulation, and may not, in itself, exceed the ceiling price established for that commodity under the General Ceiling Price Regulation (GCPR) or the applicable OPS manufacturer's regulation.)

(b) Explanations and examples. (1) "Building construction" includes but is not limited to the erection and construction of building structures intended for shelter, protection, comfort or convenience, and of production and processing facilities. The term includes but is not limited to demolition of buildings and structures, excavations, clearance of sites and leveling for foundations, the installation of plumbing, heating, air conditioning, and like equipment, and all modifications, alterations, additions and repairs.

(2) "Highway construction" includes but is not limited to the construction of roads, streets, alleys, driveways, sidewalks, guard rails, fences, parkways, parking areas, airports, bridle paths, athletic fields, highway bridges, grade separations involving highways, sewage, drainage and water works improvements incidental to street and highway improvements, and all electrical work at the site of construction.

(3) "Heavy construction and railroad construction" includes but is not limited to railroad construction projects, railroad bridges, sewers and water mains, grade separations involving a railroad, foundations, pile driving, piers, abutments, retaining walls, viaducts, tunnels, subways, track elevation, elevated highways, drainage projects, aqueducts, irrigation projects, flood control projects, reclamation projects, reservoirs, water supply projects, water power development, hydroelectric development, transmission lines, pipelines, locks, dams, dikes, levees, revetments, channels, channel cut-offs, intakes, dredging projects, jetties, breakwaters, docks, harbors, industrial sites, all earth moving (including excavation and disposal of overburden and the loading of all materials from which overburden has been removed).

(4) "Miscellaneous construction" includes but is not limited to landscaping, tree trimming for the maintenance of power lines, water well-drilling, disposal well-drilling, installation of concrete burial vaults, scaffolding construction, house moving, waterproofing, damp proofing, fireproofing, insulation, and all structural steel erecting except that excluded under the provisions of Section 3 (d).

SEC. 3. Transactions not covered. This regulation does not cover:

(a) *CPR 30 transactions.* The installation or erection of a commodity covered by Ceiling Price Regulation 30 (CPR 30) if you are a manufacturer of that commodity or the parent, an affiliate or a subsidiary of the manufacturer and you both sell that commodity and furnish the services required to install or erect it.

(b) *Appliances—retail sales and services.* (1) The separate installed sale of appliances such as domestic refrigerators, domestic washing and ironing machines, space heaters, water coolers, portable air conditioners, cooking ranges and stoves for which the cost of the required installation service is only incidental; (2) repair and maintenance services on these appliances.

(c) *Installed sales by the manufacturer of certain fabricated materials and equipment.* Unless, in accordance with your base period practice, you sell material or equipment of your manufacture on an installed basis without quoting or billing a separate charge for installation services, your sales of such materials or equipment are not covered by this regulation, but are subject to the GCPR or to the applicable OPS manufacturers' regulation.

(d) *Defense agency contracts.* Construction services, including installed sales and the installation and removal of building materials and equipment, performed in connection with any building, structure, or construction project, when such services are supplied to a Defense Agency or to any person in connection with a defense contract or subcontract by independent contractors (as distinguished from employees).

(e) *Steel fabricators and erectors.* Services of erection furnished by the producer in connection with his sales of fabricated structural steel shapes, plates and related products.

(f) *Wrecking services.* Services involving wrecking as a separate transaction, whereby a building or other structure is torn down in such a manner as to salvage materials or equipment or both contained therein or forming part thereof; whereby the services are rendered by a person who is known in the trade as a "wrecker", who may receive in addition to the salvage a cash payment for his services or who may pay the owner of the building or other structure for the excess of the value of the salvage over the value of his services; and wherein the estimated value of the salvable material or equipment forms a substantial portion of the consideration for which the services are rendered. The exemption of wrecking, as herein defined, does not extend to site clearance performed as part of a construction project.

(g) *Certain miscellaneous services.* Service contracts to maintain domestic oil burner units or comparable equipment in operation over a stipulated period of time; cesspool cleaning; water softening services; the installed sales of standard floor coverings such as linoleum.

SEC. 4. Base period. The base period of this regulation is the period July 1, 1949 through June 24, 1950.

(a) *Base period markup.* As used in this regulation your "base period mark-

up" means the highest percentage markup for profit, for overhead or for profit and overhead which you had in effect during the base period over a cost-base (as defined in section 11 (a) (2)) for any type of job or installation which you performed or upon which you submitted a written bid, in accordance with your standard estimating procedure in the base period.

(b) *Base period price.* The term "base period price" means the highest price you had in effect to each class of your purchasers during the base period for each type of construction service.

SEC. 5. *Saving provisions.*—(a) *CPR 34 ceiling prices.* Subject to the conditions set forth in paragraph (b) of this section, but notwithstanding any other provisions of this regulation, if your ceiling price for a construction service has been determined in accordance with Ceiling Price Regulation 34 (CPR 34) and properly reported thereunder, you may sell or continue to sell the construction service at the higher ceiling price which you established and reported under CPR 34. If you elect to use a percentage markup established under CPR 34, you may not then apply that percentage markup to current costs. The CPR 34 percentage markup must be applied to costs prevailing in the CPR 34 base period, December 19, 1950 through January 25, 1951, except as otherwise provided by CPR 34. This is without prejudice to your right at any time thereafter to put into effect your ceiling price as computed or recomputed under this regulation, or your ceiling markup over an appropriate cost base as established under this regulation.

(b) *Statement required.* As to any sale you make of a construction service subject to this regulation in which the price you charge is higher than the ceiling price as determined under this regulation, but not higher than the ceiling price established in accordance with your pricing method properly reported under CPR 34, you shall file with the "appropriate OPS office" (See section 45 (a) (1)), a statement setting forth the price you are charging and stating that you have priced it in accordance with CPR 34, naming the OPS District Office with which you filed your report under CPR 34. (Nothing contained in this section shall relieve you of the duty to compute, record, and report your ceiling prices and markups as required under this regulation and to file these on or before the dates upon which such reports are required to be filed.)

(c) *Jobs in progress.* Notwithstanding any other provision of this regulation you are not required to redetermine, under this regulation, the ceiling prices which you established in accordance with CPR 34 for (1) a job which is in progress on the date of issuance of this regulation, or (2) a job which you commenced before the effective date of this regulation pursuant to a written contract entered into, or a written bid submitted prior to date of issuance of this regulation.

SALES OF CONSTRUCTION SERVICES UNDER LUMP-SUM AND COST-PLUS CONTRACTS

SEC. 10. *Applicability; method of pricing.*—(a) *Applicability.* Sections 11 through 16 apply to sales on a contract basis, which are limited to the following types of transactions: (1) Lump-sum contracts; (2) cost-plus fixed percentage fee contracts; (3) cost-plus fixed dollar fee contracts; (4) cost-plus contracts with guaranteed limit (upset price contracts).

(b) *Establishment of ceiling prices, summary of method.* You are permitted to use a method of determining your ceiling prices by relation to current costs as provided in sections 11 through 15 for sales on a contract basis. If you can separate your total base period percentage markup into an applicable percentage representing profit and an applicable percentage representing your recovery of overhead expenses, you diminish your profit markup by 10 percent; this diminished profit markup added to your markup for overhead becomes your revised total markup. If you are unable to separate your total base period percentage markup into applicable profit and overhead percentages, you must, in accordance with section 30, reduce your total base period percentage markup by 10 percent to find your revised total markup. The revised total markup may be applied to current costs as provided for the several transactions covered in sections 11 through 15. For any type of job on a contract basis which you did not perform or bid on during the period July 1, 1949 through June 24, 1950, you shall establish your ceiling price, ceiling markups or ceiling fee under section 16.

SEC. 11. *Current costs and cost base.*—(a) *Definition of terms.* (1) The term "current costs" means the cost to you of labor, materials, subcontractors' charges, equipment, equipment rental, equipment operation, and incidental expenses which you are required to incur in the performance of your contract or in your sale of a construction service. They are computed as of the date you submit your bid for a lump-sum contract and as of the date on which a cost is incurred under a cost-plus contract. They must not be in excess of applicable Wage Stabilization Board ceilings or applicable OPS price ceilings, or in excess of costs from your normal sources of supply.

(2) The term "cost base" means (i) that group of costs to which, in accordance with your regular base period accounting and estimating procedures, your markups for profit, for overhead, or for combined profit and overhead are applied in arriving at your total bid price for a lump-sum contract, or (ii) that group of costs to which, under the terms of a cost-plus contract, your fixed percentage fee is applied.

(3) The term "profit markup" means the highest percentage markup for profit (as distinguished from a markup for overhead or other expenses) which you had in effect during the base period for the sale of a comparable construction service to a purchaser of the same class.

(b) *Use of same cost base.* In establishing your base period markups or your base period percentage fee, the base period contract used for comparison must have included the same cost base as the contract for which you establish a ceiling markup or ceiling percentage fee under this regulation. With respect to the record-keeping provisions of section 31 you will be required to state your markups based upon designated appropriate elements of your costs in accordance with your base period practices.

SEC. 12. *Lump-sum contracts.* A lump-sum contract is one in which you agree to a total selling price for construction services and in which you figure to recover all costs, overhead, and a profit.

(a) *Calculation of ceiling price.* In order to determine your ceiling price for a lump-sum contract you must:

(1) Find the highest percentage markup for overhead and profit which you had in effect during the base period for a comparable contract.

(2) Where possible, separate the percentage markup found under subparagraph (1) of this paragraph into the applicable percentage representing profit and the applicable percentage representing your recovery of overhead expenses. (For example, if your base period markup found under subparagraph (1) was 20 percent, 15 percent may have represented your anticipated recovery of overhead expenses and 5 percent would have remained to represent profit.)

(3) Diminish your profit markup found under subparagraph (2) by 10 percent. (For example, if your profit markup was 5 percent, you must now use 4.5 percent.)

(4) Add that portion of your base period markup representing your recovery of overhead expenses found under subparagraph (2) to your diminished profit markup found under subparagraph (3) of this paragraph. This is your revised total markup. However, if you are unable to make the separation required in subparagraph (2) of this paragraph you use section 30 to determine your revised total markup.

(5) Multiply the total estimated current cost to you of the same cost base used in your comparable base period contract by your revised total markup found under subparagraph (4). This amount represents your estimated overhead expenses plus your profit.

(6) Add the amount found under subparagraph (5) to your estimate of the total current cost to you (excluding overhead expenses, but including elements of cost to which your markup was not applied) of the work to be performed under the contract. This is your ceiling price.

(b) *Lump-sum contracts with "escalator clause."* You may, if your contract so provides, increase your ceiling lump-sum price to provide for the payment to you of increases in costs occurring after the submittal of your bid if such increased costs do not exceed the ceiling prices established under this and other applicable OPS and Wage Stabilization Board regulations as of the time of the billing.

SEC. 13. Cost-plus fixed percentage fee contracts. A cost-plus fixed percentage fee contract is one in which you agree to perform a job for a fixed percentage fee, which fee is to cover your overhead and profit over costs allowable for that purpose in your contract. In order to determine your ceiling price under a cost-plus fixed percentage fee contract you must:

(1) Find the highest percentage markup or fee which you used in the base period in a comparable contract in which the elements of cost were most nearly identical with the elements of cost in the contract you propose to perform.

(2) Where possible, separate the fee found under subparagraph (1) of this paragraph into the applicable percentage representing overhead and the applicable percentage representing profit. (For example, if your percentage fee was 20 percent, 15 percent of this might have represented overhead and 5 percent might have remained to represent profit.)

(3) Diminish the percentage of your fee representing profit by 10 percent. (For example, if 5 percent represented your profit, you must now use 4.5 percent.)

(4) Add that portion of your fee which represents overhead as found in subparagraph (2) to the diminished fee which represents profit as found in subparagraph (3) of this paragraph to determine your ceiling fixed percentage fee for that cost-plus fixed percentage fee contract. This ceiling fee, or revised total markup, may be applied to the current costs of all of the elements of cost as limited by and contained in the contract. However, if you are unable to make the separation required in subparagraph (2) of this paragraph, you use section 30 to determine your revised total markup.

SEC. 14. Cost-plus fixed dollar fee contracts. A cost-plus fixed dollar fee contract is one in which you agree to perform a job for a fee expressed in dollars and cents, which fee is to cover your overhead and profit. In order to determine your ceiling fee under a cost-plus fixed dollar fee contract you must:

(1) Find the dollar amount which you used during the base period as a fee in a comparable contract in which the elements of cost were most nearly identical with the contract you propose to perform.

(2) This dollar amount constitutes your ceiling dollar fee and may be added to the current costs of all the elements of cost as limited by and contained in the contract.

SEC. 15. Cost-plus contracts with guaranteed limit ("upset price"). A cost-plus contract with guaranteed limit, or "upset price", is one in which you establish a lump-sum price (not in excess of your ceiling price under section 12) as the highest price that your purchaser is obligated to pay you, but in which it is provided that your purchaser shall participate in any cost saving below the guaranteed limit as measured by actual cost plus your fee. In order to determine your ceiling price for this type of contract you must:

(1) Determine, in accordance with section 12, the price which is the highest lump-sum price which may be charged under this contract.

(2) Determine under section 13 or 14 (as the case may be), the fee which you may apply to the elements of cost in computing your ultimate charge for the work performed under the contract.

(3) Apply the fee found under subparagraph (2) of this paragraph to the current cost of the cost elements contained in and limited by the contract.

(4) Add the amount found under subparagraph (3) to the total current costs for the job. The resulting price, if not in excess of the price found under subparagraph (1) of this paragraph, is the ultimate contract price.

SEC. 16. Sellers on lump-sum and cost-plus contracts who cannot price under other sections. If you claim that you are unable to determine your ceiling price for a construction service or if you claim you cannot determine your ceiling markups or your ceiling fee under the provisions of sections 12 through 15, you may apply to the appropriate OPS office for approval of a ceiling price, ceiling markups or a ceiling fee proposed by you, giving the information required by paragraph (a) of this section. Your ceiling prices under this section will be related to the ceiling prices of your most closely competitive seller of the same or similar services and will be in line with the ceiling prices otherwise established by this regulation.

(a) **Application.** Your application for approval of proposed ceiling markups or proposed ceiling fees must give the following information:

- (1) Your name and address.
- (2) Kind of sale or sales to be made.
- (3) Areas or localities in which the sales are to be made.
- (4) When you first began to make such sales, if you made any prior to the date on which this regulation was issued.
- (5) Whether or not you established ceiling prices under CPR 34; if so, the corresponding prices so established by you and the OPS District Office with which you established those prices.

(6) Reasons why the pricing provisions of sections 12 through 15 of this regulation are not applicable.

(7) The ceiling price, ceiling fee, or the markup for profit and the markup for overhead which you propose and the reasons why you believe they are in line with prices, fees, or markups established under this regulation.

(8) The name and address of your most closely competitive seller in your locality or area; and his ceiling prices under this regulation for the same or similar sales if such ceiling prices are readily available to you.

(9) The cost base to which your proposed markups are to be applied.

(b) **When you may sell—(1) Waiting period.** Before selling a construction service which you seek to price under this section, you must file the application required in paragraph (a) of this section and you may not sell the service until 20 days after mailing your application or until you have received written approval of your application from OPS,

whichever is earlier (except as provided in subparagraph (2) of this paragraph or in paragraph (c) of this section). Thereafter, you may sell the service at your proposed ceiling price unless and until notified by OPS that your proposed ceiling price has been disapproved or that more information is required. In the event more information is required, you may not sell until 15 days after mailing the additional information. OPS may by written order establish your ceiling price, ceiling markups or ceiling fee in line with the ceiling prices otherwise established by this regulation, either within or after the prescribed waiting period.

(2) **Exception to prescribed waiting period.** You may, however, immediately bid or quote a price by filing by registered mail or by telegram with the appropriate OPS office a notification giving (i) your name, business address, and the nature of your business; (ii) the name of the person to whom you propose to sell, bid, or quote; (iii) the type of work involved; and (iv) the reasons involved in this transaction which you believe require this exception to subparagraph (1) of this paragraph. Not later than one week following the date you filed the notification, you must also file with the same OPS office your application under paragraph (a) of this section. To the extent that it is lower than your bid or quote, the ceiling price, the ceiling fee, or the ceiling markups established and approved under paragraph (a) of this section will be retroactive.

(c) **Use of CPR 34 prices.** If you have established a ceiling price under CPR 34 for any of the construction services covered by sections 10 through 15, you may continue to sell at the ceiling price reported in compliance with CPR 34 until the prescribed waiting periods have elapsed, or until OPS has established a ceiling price.

SALES OF CONSTRUCTION SERVICES ON A TIME AND MATERIALS, HOURLY RATE, OR INSTALLED SALE BASIS

SEC. 20. Applicability; definition of terms—(a) Applicability of following sections. (1) Section 21 is applicable to your sale of a construction service which, during the base period, you sold or offered for sale on the basis of an hourly charge for labor alone or on the basis of an hourly charge for labor plus separate charges for materials installed or expended, or construction equipment used, as required for that construction service.

(2) Section 22 is applicable to your separate sale of an item of material or equipment which, during the base period, you sold or offered for sale on the basis of a single charge which included the cost of the item, the cost of the construction service required to install or to erect it for use by the purchaser, your recovery of overhead expenses, and your profit. Your charge may have been quoted as a fixed price (available to all purchasers) which included your estimate of the cost of average installation requirements. The applicability of section 22 is limited by paragraphs (b) and (c) of section 3.

(b) **Definition of terms.** As used in sections 21 and 22:

(1) "Classification of labor" means an hourly rated job identified by the kind of work performed and according to the customary skill required. (For example: journeyman plumber, carpenter, steamfitter, apprentice, senior apprentice, helper, laborer.)

(2) "Payroll costs" mean payroll taxes; cost of pension and insurance plans; and premiums for compensation, labor and other required insurance based upon your payroll; but do not include association dues even if based upon your payroll.

(3) "Operating costs" mean the expenses incurred by you through your operation of an item of construction equipment in the completion of your construction service. They may include but are not limited to power, fuel, repairs and maintenance, parts, licensing, and taxes.

(4) "Purchaser of the same class" is defined in section 45 (a) (14).

(5) "Current costs" are defined in section 11.

(6) "Profit markup" is defined in section 11.

SEC. 21. *Ceiling prices for time and materials or hourly rate jobs.* Your ceiling price for the sale of a construction service on a time and materials or an hourly rate basis is the sum of applicable ceiling charges, calculated in accordance with the following paragraphs:

(a) *Ceiling charge for labor.* To determine your ceiling hourly charge for labor services you must:

(1) Determine the highest hourly charge which you made during the base period to a purchaser of the same class for each classification of labor used in the same construction service.

(2) Determine the base period hourly cost to you of each such classification of labor. This cost must be established for a payroll period which was concurrent with your use of the hourly charge shown in subparagraph (1) of this paragraph, and will include the hourly wage rate paid by you plus the applicable payroll costs (allocable per hour) as defined in section 20 (b) (2).

(3) Determine the current cost per hour to you of each such classification of labor, including applicable payroll costs.

(4) Subtract the amount determined in subparagraph (2) for each classification of labor from the amount determined for the same classification of labor in subparagraph (3) of this paragraph.

(5) Add, for each classification of labor used, the amount found in subparagraph (4) to the base period charge for that classification determined in subparagraph (1) of this paragraph. This is your ceiling hourly charge for that classification of labor. (As an example: The highest hourly rate which you charged any homeowner for the services of a journeyman plumber during the base period was \$4.50 per hour. At that time, you were paying your journeyman plumbers at the rate of \$2.50 per hour and your applicable payroll costs were \$0.25 per hour. The total base period cost to you of this classification of labor was \$2.50 plus \$0.25, or \$2.75 per hour. You now pay your journeyman plumbers at the rate of \$2.75 per hour and your

applicable payroll costs are \$0.28 per hour. The increase in cost to you of this classification of labor since the base period is the difference between \$2.75 and \$3.03 or \$0.28 per hour. Adding the cost increase of \$0.28 per hour to your base period charge of \$4.50 per hour, you find your ceiling charge for the services of a journeyman plumber under this regulation to be \$4.78 per hour when those services are sold to a homeowner or to any purchaser of the same class.)

(b) *Ceiling charge for materials.* To determine your ceiling charge for materials installed or expended, you must:

(1) Determine the highest percentage markup over the cost to you of material of the same category which you had in effect during the base period for a purchaser of the same class.

(2) Where possible, separate the percentage markup found under subparagraph (1) of this paragraph into the applicable percentage representing profit and the applicable percentage representing overhead. (For example, if your base period markup found under subparagraph (1) was 30 percent over the cost to you of an item of material, 10 percent may have represented your recovery of overhead expenses and 20 percent would have remained to represent profit.)

(3) Diminish your profit markup found under subparagraph (2) of this paragraph by 10 percent. (For example, if your profit markup was 20 percent during the base period, your diminished profit markup is 18 percent.)

(4) Add that portion of your base period markup which represented your recovery of overhead expenses as found under subparagraph (2) to your diminished profit markup as found under subparagraph (3). This is your revised total markup. (Using the markups shown as examples in subparagraphs (2) and (3) of this paragraph, your revised total markup would be 28 percent.) However, if you are unable to make the separation required in subparagraph (2) of this paragraph, you use section 30 to determine your revised total markup.

(5) Multiply the current cost to you of the material by the revised total markup found under subparagraph (4) of this paragraph. This amount represents your profit plus your recovery of overhead expenses. (For example, if you used one thousand board feet of lumber at a current cost to you of \$70 for the material delivered to the job site, and if your revised total markup was 28 percent, your combined overhead and profit would be \$19.60.)

(6) Add the current cost to you of the material or equivalent to the amount for combined overhead and profit as found under subparagraph (5) of this paragraph. This is your ceiling charge for materials. (Using the figures shown as an example in subparagraph (5), your ceiling charge for the thousand board feet of lumber would be \$70 plus \$19.60, or \$89.60.)

(c) *Ceiling charge for the use of construction equipment owned by you.* To determine your ceiling charge against a job for the use by you of an item of construction equipment which you own, you must:

(1) Find the highest charge (by the hour, day, job, or other unit) which you had in effect during the base period for an item of construction equipment of the same kind to a purchaser of the same class.

(2) Find the base period replacement cost to you of that item of construction equipment.

(3) Find the current cost to you for replacement of that item of construction equipment.

(4) Divide the current cost for replacement found under subparagraph (3) by the base period replacement cost found under subparagraph (2) of this paragraph.

(5) Multiply the base period charge found under subparagraph (1) by the figure found under subparagraph (4) of this paragraph. This is your ceiling charge. (For example, if your base period charge was \$5 a day for the use of an item of construction equipment having a base period replacement cost of \$1,000 and a current replacement cost of \$1,100, your ceiling charge for the use of that item of construction equipment, under this regulation, would be $\$5 \times \frac{1100}{1000}$, or \$5.50 per day.)

(6) If, during the base period, it was your practice to charge operating costs in addition to the hourly or daily charge for the use of the item of construction equipment, you may continue to do so under this regulation, adding the current operating cost actually incurred by you for operation or repairs to the ceiling charge found in subparagraph (5) of this paragraph.

(d) *Ceiling charge for the use of construction equipment which you do not own.* To determine your ceiling charge against a job for the use by you of an item of construction equipment which you do not own but rent from others, you must use whichever of the two alternative methods presented in subparagraphs (1) and (2) of this paragraph, is applicable to your base period practice. Subparagraph (1) is applicable to you if, during the base period, it was your practice to charge for the use of construction equipment on the basis of your rental cost plus your actual operating costs plus a markup for overhead and profit applied to one or both of these costs. Subparagraph (2) is applicable to you if, during the base period, it was your practice to charge for the use of construction equipment on the basis of your rental cost plus a markup over that cost wherein your markup was calculated to recover your estimated operating costs, your overhead expenses, and to leave a margin of profit.

(1) To determine your ceiling charge for the use by you of an item of construction equipment which you do not own, you must, if you use the first method:

(i) Find the elements of cost to which your markup for profit and overhead was applied in accordance with your base period practice. (For example, your markup may have been applied to your rental cost alone, to your operating costs alone, or to your combined rental and operating costs.)

(ii) Find the elements of cost to which your markup for profit and overhead was applied in accordance with your base period practice. (For example, your markup may have been applied to your rental cost alone, to your operating costs alone, or to your combined rental and operating costs.)

(ii) Find the highest percentage markup (for overhead and profit) over the elements of cost determined in subdivision (i) of this subparagraph which you had in effect during the base period for an item of construction equipment of the same kind for a purchaser of the same class.

(iii) Where possible, separate the percentage markup found under subdivision (ii) into the applicable percentage representing profit and the applicable percentage representing your recovery of overhead expenses.

(iv) Diminish your profit markup found under subdivision (iii) by 10 percent.

(v) Add the diminished profit markup found under subdivision (iv) to that portion of your base period markup representing your recovery of overhead expenses. This is your revised total markup. However, if you are unable to make the separation required in subdivision (iii) of this subparagraph, you use section 30 to determine your revised total markup.

(vi) Multiply the revised total markup found under subdivision (v) by the current cost to you of the applicable elements of cost found under subdivision (i) of this subparagraph. This amount represents your profit plus your recovery of overhead expenses.

(vii) Add the amount found under subdivision (vi) to the current cost to you of rental plus your actual current operating costs. This is your ceiling charge.

(2) To determine your ceiling charge for the use by you of an item of construction equipment which you do not own, you must, if you use the second method:

(i) Find the highest percentage markup over your rental cost (for profit, overhead, and estimated operating costs) which you had in effect during the base period for an item of construction equipment of the same kind for a purchaser of the same class.

(ii) Where possible, separate the percentage markup found under subdivision (i) into the applicable percentage representing profit and the applicable percentage representing your recovery of overhead expenses and estimated operating costs.

(iii) Diminish your profit markup found under subdivision (ii) by 10 percent.

(iv) Add the diminished profit markup found under subdivision (iii) to that portion of your base period markup representing your recovery of overhead expenses plus your estimated operating costs. This is your revised total markup. However, if you are unable to make the separation required in subdivision (ii) of this subparagraph, you use section 30 to determine your revised total markup.

(v) Multiply the revised total markup found under subdivision (iv) by the current cost to you of rental. This amount represents your profit plus your recovery of overhead expenses and operating costs.

(vi) Add the amount found under subdivision (v) to the current cost to you of rental. This is your ceiling charge.

SEC. 22. Installed sales. To determine your ceiling price for the separate sale of an item of material or equipment together with the construction service required to install or to erect it for use by the purchaser, you must determine your ceiling price in accordance with whichever of the alternative methods shown in paragraphs (a), (b), and (c) of this section is applicable to your base period practice.

(a) This paragraph applies to you if, during the base period, it was your practice to make or offer to make an installed sale of an item of material or equipment on the basis of a single charge which included the cost to you of that item plus your estimate (formulated for each sale) of the cost to you of the required installation or erection plus a markup for profit and overhead applied to one or both of these costs. Under these conditions, your ceiling price for the sale must be determined in accordance with the pricing method shown in section 12 for a lump-sum contract.

(b) This paragraph applies to you if, during the base period, it was your practice to make or offer to make an installed sale of an item of material or equipment on the basis of a single charge which included the cost to you of that item plus the actual cost to you of the required installation or erection service plus a percentage markup for overhead and profit applied to one or to both of those costs. Under these conditions, your ceiling price for the sale must be determined in accordance with the pricing method shown in section 13 for a cost-plus percentage fee contract.

(c) This paragraph applies to you if, during the base period it was your practice to make or offer to make an installed sale of an item of material or equipment on the basis of a single charge which included the cost to you of the item plus a markup over that cost wherein your markup was calculated to recover your estimated installation or erection cost, to recover your overhead expenses, and to leave a margin of profit. To determine your ceiling price for an installed sale under this paragraph, you must:

(1) Find the highest percentage markup over the cost to you of the item which you had in effect during the base period for a similar installed sale to a purchaser of the same class. (As used in this paragraph, your markup is one which has been calculated to recover your estimated installation or erection cost under normal or average installation conditions, to recover your overhead expenses, and to leave a margin of profit.)

(2) Where possible, separate the percentage markup found under subparagraph (1) of this paragraph into the applicable percentage representing profit and the applicable percentage representing your recovery of estimated installation or erection cost and overhead expenses.

(3) Diminish the profit markup found under subparagraph (2) by 10 percent.

(4) Add the diminished profit markup found under subparagraph (3) to that portion of your base period markup representing your recovery of estimated in-

stallation or erection costs and overhead expenses, as found in subparagraph (2) of this paragraph. This is your revised total markup. However, if you are unable to make the separation required in subparagraph (2) of this paragraph you use section 30 to determine your revised total markup.

(5) Multiply the revised total markup found under subparagraph (4) by the current cost to you of the item. This amount represents your recovery of estimated installation or erection cost plus your recovery of overhead expenses, plus your profit.

(6) Add the amount found under subparagraph (5) to the current cost to you of the item. This is your ceiling price.

(7) If during the base period, it was your practice to advertise or to offer generally a fixed price for the installed item under normal or average installation conditions, and to add to that price a charge for labor and materials required in excess of normal or average installation requirements, you may continue that practice. In this case, the ceiling price shown in subparagraph (6) becomes your ceiling offering price for the installed sale under normal or average installation conditions, and you may add to that price your ceiling charges established under section 21 for labor and materials required in excess of normal or average installation requirements. The sum of your ceiling offering price plus your ceiling charges for additional labor and materials becomes your ceiling price for the installed sale.

SEC. 23. Sellers on time and materials, hourly rate, or installed sales basis who cannot price under other sections. If during the base period you did not do the same kind of work, or if you claim you cannot determine your ceiling price or ceiling charge under the provisions of sections 21 or 22, you may apply to the appropriate OPS office for approval of a ceiling price, ceiling markup, or ceiling rates proposed by you, giving the information required by paragraph (a) of this section. Your ceiling prices established under this section will be related to the ceiling prices of your most closely competitive seller of the same or similar service and will be in line with the ceiling prices otherwise established by this regulation.

(a) **Application.** Your application for approval of proposed ceiling markups, ceiling rates or ceiling prices shall give the following information:

(1) Your name and address.
(2) Kind of sale or sales to be made.
(3) Area or locality in which sales are to be made.

(4) When you first began to make such sales, if you made any prior to the date on which this regulation was issued.

(5) Whether or not you established ceiling prices under CPR 34; if so, the corresponding prices so established by you, and the District Office with which you established those prices.

(6) Reasons why the pricing provisions of sections 21 or 22 are not applicable.

(7) The ceiling price, ceiling markups or ceiling hourly rates proposed by you and the reasons why you believe they

are in line with those established by this regulation.

(8) The name and address of your most closely competitive seller in your locality or area; and his ceiling price under this regulation for the same or similar sales if such ceiling price is readily available to you.

(b) *When you may sell.* Before selling a construction service which you seek to price under this section, you must file the application required in paragraph (a) of this section and you may not sell the service until twenty days after mailing your application or until you have received written approval of your application from OPS, whichever is earlier (except as provided in paragraph (c) of this section). Thereafter, you may sell the service at your proposed ceiling price unless and until notified by OPS that your proposed ceiling price has been disapproved, or that more information is required. In the event that more information is required, you may not sell until fifteen days after mailing the additional information. OPS may by written order establish your ceiling price, ceiling markups or ceiling rates in line with the ceiling prices otherwise established by this regulation, either within or after the prescribed waiting periods.

(c) *Use of CPR 34 prices.* If you have established a ceiling price under CPR 34 for any of the construction services covered by sections 20, 21 and 22 of this regulation, you may continue to sell at the ceiling price reported in compliance with CPR 34 until the prescribed waiting periods have elapsed, or until OPS has established a ceiling price.

GENERAL PROVISIONS

SEC. 30. Overriding provision for use of total markup. Wherever in this regulation you are required to separate your base period markup, or base period percentage fee, into an applicable percentage representing your recovery of overhead (or other) expenses and an applicable percentage representing profit (for the purpose of diminishing your profit markup), and you find that such separation cannot be made and substantiated, or that such separation imposes an undue hardship, you: (1) Reduce your total base period markup by 10 percent, and then (2) use this diminished total markup in each case where a "revised markup" (consisting of diminished profit markup plus markup for recovery of overhead or other expenses) is used as part of a pricing method.

SEC. 31. Record-keeping requirements—(a) General provisions—(1) Base period. You must prepare and preserve for the life of the Defense Production Act of 1950 as amended and for two years thereafter:

(i) All records pertaining to the base period which you are required to use to compute correctly your ceiling prices, ceiling mark-ups, ceiling fees, ceiling rates, and ceiling charges in accordance with this regulation.

(ii) All available records showing the cost to you of labor, materials, equipment rental, and other expenses incurred by you in connection with your sale of any construction service during the base period.

(iii) All available records showing the charges you made or the prices you offered in connection with your sale of any construction service during the base period.

(iv) All written contracts which were in effect as to you for sales of construction services and all written bids which you submitted in connection with your sale of (or offer to sell) any construction service during the base period.

(2) *Current period.* You shall retain the following records for a period of two years from the date when such records originated.

(i) All available records showing the cost to you of labor, materials, equipment rental, and other expenses incurred by you in connection with your sale of any construction service since the effective date of this regulation.

(ii) All available records showing the charges you made, or the prices you offered, in connection with your sale of any construction service since the effective date of this regulation.

(iii) All written contracts which were in effect as to you for sales of construction services and all written bids which you submitted in connection with your sale of (or offer to sell) any construction service since the effective date of this regulation.

(3) All record-keeping requirements pertaining to and relating to your sale of construction services under GCPR and CPR 34 remain in effect and you shall retain all records, reports, applications, and petitions for the period specified in GCPR and CPR 34.

(b) *Special record required for lump-sum or cost-plus contracts.* You must prepare and preserve for the life of the Defense Production Act of 1950, as amended, and for two years thereafter, for each type of construction service which you sell or offer to sell under a lump-sum or a cost-plus contract, subsequent to the effective date of this regulation, a recapitulation or summary of the information contained in the records required to be prepared and preserved under paragraph (a) of this section. This recapitulation or summary may be prepared and preserved in the form set forth in Appendix A, or in a form substantially the same.

SEC. 32. Reporting requirements for sales on hourly rate, time and materials or installed sales basis—(a) Basic report. If, subsequent to the effective date of this regulation, you sell or offer to sell a construction service on a time and materials basis or on an hourly rate basis, you must prepare and file with the appropriate OPS office (see section 45 (a) (1)) a report on OPS Public Form No. 101. If, subsequent to the effective date of this regulation, you sell or offer to sell an item of material or equipment on an installed sale basis subject to the provisions of section 22 (c), you must prepare and file with the appropriate OPS office a report on OPS Public Form No. 103.

(b) *Supplemental reports.* If, after filing your basic reports, it becomes necessary, due to subsequent cost increases incurred by you to increase your ceiling hourly rate for labor services, or to increase your ceiling price for your sale of

an item on an installed sale basis, you must prepare and file with the appropriate OPS office a supplemental report on OPS Public Form No. 102 (for hourly rate) or on OPS Public Form No. 104 (for installed sales).

(c) *Filing date.* The basic reports required in paragraph (a) of this section must be mailed to the appropriate OPS office not later than 60 days after the date on which your prices for construction services sold on a time and materials basis, hourly rate basis, or installed sale basis are first established by this regulation. The supplemental reports required in paragraph (b) of this section must be mailed to the appropriate OPS office not later than the date on which you put into effect a price or an hourly rate in excess of the ceiling price or the ceiling hourly rate reported by you in your basic report.

(d) *Report forms; availability of copies.* Copies of the OPS Public Forms required for use under this section may be obtained from any Regional or District Office of the Office of Price Stabilization.

SEC. 33. Separate places of business. If you maintain more than one place of business for the sale of construction services, you may establish your ceiling prices separately for each such place of business which (1) has exclusive coverage over a geographical area, or a particular field of activity, (2) maintains independent records for all transactions within that area or for that particular form of activity, and (3) independently formulates all bids and contracts for construction services to be performed within that area or for that particular form of activity, including the independent estimate of costs and application of appropriate markups over costs to cover overhead and profit or (4) sells construction services on a time and materials, hourly rate or installed sales basis at prices and charges customarily different from those in effect at your other places of business.

SEC. 34. Transfers of business or stock in trade. If the business, assets or stock in trade are sold, or otherwise transferred, after the issue date of this regulation, and the transferee carries on the business, or continues to deal in the same type of service, in an establishment separate from any other establishment previously owned or operated by him, the ceiling prices of the transferee shall be the same as those to which his transferor would have been subject if no such transfer had taken place, and his obligation to keep records sufficient to verify such prices shall be the same. The transferor shall either preserve and make available or turn over to the transferee and the transferee shall obtain from the transferor all records of transactions prior to the transfer which are necessary to enable the transferee to comply with the provisions of this regulation.

SEC. 35. Prohibitions. (a) You shall not do any act prohibited or omit to do any act required by this regulation, nor shall you offer, solicit, attempt, or agree to do or omit to do any such acts. Specifically (but not in limitation of the above), regardless of any contract or other obligation, but subject to the pro-

visions of section 5, you shall not sell, and no person in the regular course of trade or business shall buy from you at a price higher than the ceiling price established by this regulation, and you shall keep, make and preserve true and accurate records and reports, required by this regulation.

(b) On and after the effective date of this regulation you shall not sell any construction service subject to this regulation unless you have complied with the record-keeping requirements of section 31, and the reporting requirements of section 34 applicable to you, and until the expiration date of any waiting periods as may be prescribed in this regulation.

SEC. 36. Evasions. Any device which results in obtaining indirectly a higher price than is permitted by this regulation or in concealing or falsely representing information as to which this regulation requires records to be kept is a violation of this regulation. This prohibition includes, but is not limited to, devices making use of commissions, services, cross sales, transportation arrangements, premiums, discounts, special privileges, up-grading, tie-in agreements and trade understandings, as well as the omission from records of true data and the inclusion in records of false data.

SEC. 37. Refusal to sell a lower priced service. (a) A seller may discontinue selling his services. If, however, he discontinues a service that he offered in the base period or since, and sells or offers to sell in its place a higher priced service which will achieve the same general purposes as the service he discontinues, he is evading the Defense Production Act of 1950, as amended, and is violating this regulation, unless it appears that one or more of the following conditions exists:

- (1) That specialized equipment or supplies requisite to a continuance of the particular service are not available; or
- (2) That the continuance of the particular service would be in violation of or would be rendered impracticable by a governmental order or regulation, or that it would be contrary to governmentally established standards or policies; or
- (3) That discontinuance of the particular service will enable the seller to maintain other services more necessary to the community directly concerned; or
- (4) That other suppliers in the community are able and willing to supply the requested service or a similar service in requisite amount and at prices not exceeding the ceiling price of the particular seller.

(b) A seller who refuses to supply a service which he offered in the base period or since and who sells or offers to sell in its place a higher priced service which will achieve the same general purposes as the service he refuses to supply must, unless otherwise permitted to do so by a general permissive order, certify by registered mail to the appropriate OPS office, the existence of one or more of the conditions stated in paragraph (a) of this section. Unless sufficient facts are given to support the certifica-

tion, the request will be denied, without prejudice to an opportunity to the seller to furnish additional evidence.

(c) Unless the Director of Price Stabilization or his authorized representative shall, by notice mailed to the seller within thirty days after the date of the receipt of the certified statement, disapprove the request, the seller may discontinue the service.

SEC. 38. Violations. — (a) *Civil and criminal action.* If you violate any provisions of this regulation you are subject to the criminal penalties, civil enforcement action, and suits for treble damages provided by the Defense Production Act of 1950, as amended.

(b) *Record-keeping and filing violations; failure to establish ceiling price.* If you fail to keep, or fail to prepare and keep the records; or fail to prepare, or fail to prepare and file the reports required by this regulation, or if such records or reports and supplementary reports are incorrect or incomplete, or if you have failed to apply to OPS for the establishment of a ceiling markup or price if you are required to do so, the Office of Price Stabilization may issue an order fixing your ceiling markups or prices for the construction services you sell. The OPS order fixing the ceiling markups or prices may apply to all sales for which ceiling markups or prices were not established in accordance with the provisions of this regulation. The issuance of such an order will not relieve you of the obligation to comply with the requirements of this regulation or of the various penalties for your failure to do so.

SEC. 39. Earlier effective date. You may, after the issuance of this regulation and at any time prior to the effective date thereof, make it effective as to your sale of any construction service by completing the record-keeping and making the reports required by sections 31 and 32.

SEC. 40. Petitions for amendment. If you seek a change in any provision of this regulation affecting sellers of construction services generally, you may file a petition for amendment. Petitions for amendment shall be filed in accordance with the requirements of Price Procedural Regulation No. 1, Revised, and shall be filed with the Director of Price Stabilization, Washington 25, D. C.

SEC. 41. Amendments, supplementary regulations, orders. This regulation may be changed or supplemented at any time by amendments, supplementary regulations, orders, or other appropriate action.

SEC. 42. Geographical applicability of this regulation. This regulation applies to the sale of construction services performed in the 48 States of the United States, its territories and possessions, and the District of Columbia.

SEC. 43. Sales at lower than ceiling prices. You may contract at a price lower than your ceiling price established under this regulation or CFR 34, but the lower contract price does not constitute your ceiling price.

SEC. 44. Customary price differentials. Your ceiling prices, when determined, shall reflect your customary price differentials, including discounts, allowances, premiums and extras, based upon differences in classes or location of purchasers, or in terms and conditions of sale or delivery.

SEC. 45. Definitions and explanations. (a) When used in this regulation:

(1) "Appropriate OPS Office," means the District Office of the Office of Price Stabilization for the District where your home office or principal place of business is located.

(2) "Comparable contract" means a contract which you bid upon or performed for the same type of construction service (as exemplified in section 2 (b)) during the base period. It must have had essentially the same elements of cost with approximately the same total dollar value, have presented similar technical difficulties, and required approximately the same time to complete as the contract which you seek or agree to perform.

(3) "Construction service" means any transaction covered by this regulation.

(4) "Defense Agency" means the Department of Defense (including the Department of the Army, the Department of the Navy, and the Department of the Air Force), the Maritime Administration of the Department of Commerce, the United States Coast Guard, and the Atomic Energy Commission.

(5) "Defense contract" means any purchase order or agreement with a Defense Agency.

(6) "Installed sale" means the separate sale of an item of equipment or material together with the construction service required to install or erect it, wherein a single charge is billed to the purchaser.

(7) "Manufacturer" includes a producer, processor, assembler, finisher or fabricator. You are not a manufacturer unless you substantially change the form of some commodity or commodities, combine two or more commodities into a different one, or create a new commodity from existing ones.

(8) "Materials" includes any raw materials, processed or fabricated article, equipment, or any other commodity, commonly considered building materials for incorporation into or to be made a part of or to be expended in the construction of any building, structure or construction project.

(9) "Most closely competitive seller of the same class" is the seller with whom you are in most direct competition. You are in direct competition with another seller who sells the same type of construction service to the same class of purchaser in similar quantities on similar terms.

(10) "Normal sources of supply" are those suppliers from whom, during the base period or thereafter, you customarily purchased materials for your use in the completion of a construction service. They do not include new sources from which you purchase those materials at a higher cost.

(11) "OPS" means the Office of Price Stabilization, the Director of Price Sta-

bilization or any official of the Office of Price Stabilization to whom the Director of Price Stabilization has delegated authority in this regulation, or may by order otherwise delegate authority.

(12) "Payroll costs" means payroll taxes; cost of pension and insurance plans; and premiums for compensation, labor, and other required insurance which is based upon your payroll, but does not include association dues even if based upon your payroll.

(13) "Price" or "ceiling price" means the highest total monetary charge which you may make under this regulation for a construction service, including your recovery of labor, material, and equipment costs, your recovery of overhead expenses, and a profit. Under this regulation, your "ceiling price" may represent your application of ceiling mark-ups to current costs, or your addition of ceiling fees to current costs, or it may be derived directly from your application of ceiling hourly rates.

(14) "Purchaser of the same class". This term has reference to your own practice of setting different prices for

different purchasers or groups of purchasers. The practice may (but need not be) based on the characteristics of the purchaser, the location of the purchaser, or the quantity purchased by him. If you have followed the practice of giving an individual customer a price differing from that charged others, that customer is a separate class of purchaser.

(15) The words "sell" and "sale" also include bids, offers or contracts to sell.

(16) "Shop fabrication" means shop costs (labor, materials and shop burden) necessary to the fabrication in your own shop or plant of materials for installation as required in the performance of your contract. The cost of materials shall be based on purchases from your customary sources of supply.

(17) "Subcontractor" means a person who, under the terms of a contract with you as the seller of a construction service, undertakes to perform for you a part or all of the construction service you have contracted to supply or perform.

(18) "Subcontractor's charges" mean the actual cost to you of work performed by another, who is a subcontractor, on

a portion of your total job or contract. (19) "You" means a person and refers to any seller of construction services subject to this regulation.

Sec. 46. Interpretations. If you have any doubt as to the meaning of this regulation, you should write to the District Counsel of the proper OPS District Office for an interpretation. Any action taken by you in reliance upon and in conformity with a written official interpretation will constitute action in good faith pursuant to this regulation. Further information on obtaining official interpretations is contained in Price Procedural Regulation 1.

Effective date. The effective date of this regulation is November 20, 1951.

NOTE: The record-keeping and reporting requirements of this regulation have been approved by the Bureau of the Budget, in accordance with the Federal Reports Act of 1942.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

NOVEMBER 14, 1951.

APPENDIX A. INSTRUCTIONS FOR COMPLETING RECORD RECAPITULATION

MARKUPS OR FEES FOR SALES UNDER LUMP-SUM AND COST-PLUS CONTRACTS (SEC. 31)

[For lump-sum, fill out columns (a) through (l); for cost-plus fixed percentage fee, fill out columns (a) through (l); for cost-plus fixed dollar fee, fill out columns (a) through (f) and column (m)]

Base period contract used for comparison						Cost base	Base period percentage markup or fees		CPR 93		Base period fixed dollar fee
Contract No. and date	Contract with—	Contract price	Type of service	Applies to contracts in size			Percent for profit	Percent for overhead	Profit markup	Total markup or fee	
				From—	To—						
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(k)	(l)	(m)
(Example of lump-sum and cost-plus fixed percentage fee contracts)						Labor, materials, equipment rental, equipment operation, grading subcontracted.	Percent 10	Percent 15	Percent 9	Percent 24	-----
9998 July 30, 1949	Blank Investment Co.	\$40,389.62	House construction (lump-sum).....	\$30,000	\$50,000						
(Example of cost-plus fixed dollar fee contracts)											\$2,000
9999 Mar. 1, 1950	Blank Investment Co.	12,000.00	Building repairs.....	10,000	30,000						

INSTRUCTIONS FOR COMPLETING RECORD RECAPITULATION (MARKUPS OR FEES FOR SALES UNDER LUMP-SUM AND COST-PLUS CONTRACTS)

You must prepare and preserve for the life of the Defense Production Act of 1950, as amended, and for two years thereafter, for each type of construction service which you sell or offer to sell under a lump-sum or a cost-plus contract, subsequent to the effective date of this regulation, a recapitulation or summary of the information contained in the records required to be prepared and preserved under paragraph (a) of Section 31. This recapitulation or summary may be prepared and preserved in the form set forth in this Appendix, or in a form substantially the same.

Type of contractor. Indicate whether you are a general contractor engaged in building construction, highway construction or heavy construction; or a special trades contractor engaged in (specify):

- Plumbing, heating, air conditioning, and refrigeration
- Painting and paper hanging
- Electrical work
- Masonry, tile setting, and plastering
- Carpentry and flooring
- Roofing and Insulation
- Sheet metal work
- Concrete work
- Water well drilling

j. Miscellaneous special trade contractors (specify)

Base period contract used for comparison. Enter under this heading the identification and description of each "comparable" base period contract which you elect to use as a basis for percentage markups or percentage fees established under this regulation.

The term "comparable contract", refers to a contract which you had in effect or upon which you bid during the base period; the "comparable contract" must have been for the same type of construction service and must have been of approximately the same size and duration as the contract for which you seek to establish a ceiling markup or fee under this regulation.

(a) **Contract number and date.** Enter the numerical symbol given to the comparable contract, if the contract was so identified. If the contract was written, but carried no identification number, you enter the word "NONE". If the contract was oral, you enter the words "NONE-Oral". Enter the date such contract was awarded.

(b) **Contract with.** Give the name of the person or organization for whom the work was performed (your contract principal).

(c) **Contract price.** Enter the dollar and cents amount charged for the work performed under the "comparable contract" or, if the "comparable contract" represents a cost-plus contract for which the over-all cost is not available to you, enter the approximate dollar size of the contract.

(d) **Type of service.** Enter any of the following terms or a descriptive term of your own choosing which may be applicable to describe the kind of work performed under the comparable contract, together with the kind of contract (for example: Roofing Repair—Lump Sum):

For general contractors engaged in building construction

- House construction.
- Apartment house building.
- Farm buildings.
- Industrial, commercial, institutional and public building.
- Light and power plants.
- Natural gas compressing stations.
- Oil pumping stations.
- Refuse disposal plants.

(specify whether new work, additions, or alterations or repairs)

For general contractors who engage in highway or heavy construction

- Highway and street construction.
- Heavy construction except highway construction such as, but not limited to, (specify) railroad construction, heavy construction sewers and water mains, heavy foundations, abutments, tunnels, subways, elevated highways, viaducts, drains, reservoirs, drainage projects, gas mains, hydroelectric projects, pipe lines, waterpower projects, transmission lines, radio towers, and ovens, furnaces, kilns, silos, etc.

For special trades contractors

Heating	Plastering
Plumbing	Carpentry
Air Conditioning	Roofing
Refrigeration	Sheet metal work
Ventilation	Concrete work
Interior and Ex-	Water-well drilling
terior painting	Structural steel
Paper hanging	erection
Decorating	Ornamental iron
Wrecking	work
Demolition	Glass and glazing
Electric work at	work
site	Excavation and
Masonry	foundation work
Stonework	Other (specify)
Tile setting	

(e) and (f) *Applies to contracts in size from \$---- to \$-----*. If it has been your general practice to vary your percentage markups over cost, depending upon the size of a particular job, you should list one "comparable contract" for each price range where there is a variance in your markup.

If your markup for contracts for the price range of \$100 to \$999 was 35%; for \$1,000 to \$9,999, 30%; and \$10,000 to \$49,999, 25%; then you should list one "comparable contract" for each of these three price ranges separately. The particular price range is not limited to any definite dollar and cents figures spelled out by the regulation, but by whatever has been your established practice in varying percentage markups.

For lump-sum and cost-plus fixed percentage fee

(g) *Cost base*. Under the term "cost base" list all the components such as labor, materials, equipment, subcontractors' charges, equipment rental, etc., which were taken into account by you for purposes of arriving at a figure on which to apply your percentage markups or your percentage fee for profit and overhead.

(h) and (j) *Base period percentage markup or fee—percentage for profit—percentage for overhead*. Enter the overall percentage markup or percentage fee that was applied by you under your "comparable contract" during the base period over the components of cost listed in Cost Base column (g) for both profit and overhead.

(k) *CPR 93—Profit markup*. In this column insert 9/10 of the percentage figure of column (h).

(l) *CPR 93—Total markup or fee*. Enter in this column the total of columns (j) and (k).

If you find that separation of your base period markup or percentage fee into an applicable percentage for recovery of overhead expenses and an applicable percentage representing profit cannot be made, or imposes undue hardship, you may omit this separation and diminish your total base period percentage markup or percentage fee by 10%. If you choose this method, show your total base period percentage markup or percentage fee in column (h); do not make any entries in either columns (j) or (k); in column (l) enter 9/10 of the percentage you have shown in column (h)—this will give you your CPR 93 total percentage markup or fee.

For cost-plus fixed dollar fee only

(m) *Base period fixed dollar fee*. Indicate the dollars and cents amount which you used during the base period as a fee in your comparable contract.

[F. R. Doc. 51-13767; Filed, Nov. 14, 1951; 11:47 a. m.]

Chapter IV—Salary and Wage Stabilization, Economic Stabilization Agency**Subchapter A—Salary Stabilization Board**

[General Salary Order 5]

GSO 5—INTER-PLANT INEQUITIES**STATEMENT OF CONSIDERATIONS**

The Salary Stabilization Board recognizes that inter-plant inequities have arisen calling for correction in accordance with provisions of the Defense Production Act contemplating the correction of hardships and inequities. It has been found impossible to formulate a general regulation for the correction of such inequities because there is no firm or reliable pattern of schedules or standards of compensation for employees subject to the jurisdiction of the Salary Stabilization Board. Accordingly, inter-plant inequities must be reviewed and corrected upon an individual basis, basing the decision on an analysis, among other things, of industry or area practice. The purpose of this general salary order is to authorize the Office of Salary Stabilization to correct hardships and inequities of this nature.

ORDER

The Office of Salary Stabilization is hereby authorized to approve adjustments in salaries and other compensation of employees subject to the jurisdiction of the Salary Stabilization Board in order to correct inter-plant inequities in a manner consistent with the general policies of the Salary Stabilization Board and based upon industry or area practice and other pertinent factors.

(Sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154. Interpret or apply Title IV, 64 Stat. 803, as amended; 50 U. S. C. App. Sup. 2101-2110, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.)

By order of the Salary Stabilization Board.

RAYMOND B. ALLEN,
Chairman.

OCTOBER 29, 1951.

[F. R. Doc. 51-13787; Filed, Nov. 14, 1951; 12:04 p. m.]

Chapter XVI—Production and Marketing Administration, Department of Agriculture

[Defense Food Order 3, Sub-Order 2, Amdt. 3]

DFO 3—AGRICULTURAL IMPORTS**SO 2—POLICY STATEMENT RE IMPORT AUTHORIZATIONS FOR CERTAIN DAIRY PRODUCTS**

Sub-Order 2 containing a statement of the policies relating to the issuance of import authorizations for certain dairy products, as amended (16 F. R. 7936, 8273, 9690) under Defense Food Order 3, as amended (16 F. R. 7934, 8273) is hereby further amended pursuant to the authority vested in me by said Defense Food Order 3, under sections 101, 104, and 704 of the Defense Production Act of 1950, as amended (Pub. Law 774, 81st

Cong., as amended by Pub. Law 96, 82d Cong.).

Consultation has been held almost continuously in administration of Sub-Order 2, as amended, with representatives of the industries affected by the Sub-Order, and in the formulation of this amendment consideration has been given to their recommendations.

Defense Food Order 3, Sub-Order 2, as amended, is hereby amended to read as follows:

Sec.

1. Policy statement re import authorizations for certain dairy products.
2. Definitions.

AUTHORITY: Secs 1 and 2 issued under section 704, 64 Stat. 816, Pub. Law 96, 82nd Cong., 50 U. S. C. App. Sup. 2154. Interpret or apply secs. 101 and 104, 64 Stat. 798, Pub. Law 96, 82nd Cong., 50 U. S. C. App. Sup. 2071 and 2074.

SECTION 1. Policy statement re import authorizations for certain dairy products—(a) Casein or lactarene, and mixtures in chief value thereof, n. s. p. f. Import authorizations will be issued for casein or lactarene, and mixtures in chief value thereof, n. s. p. f., as follows:

(1) Any importer who is desirous of securing import authorization for any such product and who imported such product during the base period July 1, 1950, through June 30, 1951, must submit documentary evidence satisfactory to the Director showing imports of such product through customs made in his own name as the importer of record during the specified base period. Authorizations will be issued to such an importer, limiting the quantity of the product to be imported during the period August 9, 1951, through June 30, 1952, to an amount not in excess of eleven-twelfths of the quantity of such product he imported during the specified base period.

(2) Authorizations totaling not in excess of 100,000 pounds will be granted for the importation of these products prior to July 1, 1952, to small independent enterprises which are in the business of importing dairy products other than the one for which authorization is desired and which have not received any import authorization under subparagraph (1) of this paragraph. The amount authorized for any applicant under this subparagraph will not exceed 1,000 pounds. Applications for authorization under this subparagraph must state the product to be imported and must include a statement concerning the size and nature of the applicant's business enterprise.

(3) Import authorizations for these products will be issued to small plants as required by section 714 of the Defense Production Act of 1950, as amended.

(4) Authorizations will be issued for the importation of these products which were in transit to the United States on August 9, 1951, but amounts so authorized for any importer shall be deducted from the amounts of such products authorized for such importer under subparagraphs (1) or (2) of this paragraph.

(b) *Cheese*. Import authorizations will be issued for cheese as follows:

(1) Any importer who is desirous of securing import authorization for any type of cheese and who imported such cheese in the three-year base period January 1, 1948, through December 31, 1950, must submit documentary evidence satisfactory to the Director showing by country of origin the imports of such cheese through customs made in his own name as the importer of record during the specified base period. Authorizations will be issued to such an importer, limiting the quantity of the particular type of cheese to be imported during the period August 9, 1951, through June 30, 1952, to an amount not in excess of eleven-twelfths of the average annual quantity of such type of cheese he imported during the specified base period. In case any such importer did not import a particular type of cheese at any time in 1948, an adjusted quota will be established for him, taking into consideration the percentage which his imports of such cheese constituted of the total imports of such cheese during the remainder of the base period beginning with the calendar quarter in which he began such importations, and such other factors as must be considered to avoid inequities. Such adjusted quotas will be established only if the application submitted by the applicant shows that he did not at any time in 1948 import the particular type of cheese for which application is made.

(2) Any importer who is desirous of securing authorization to import any type of cheese prior to July 1, 1952, and whose application shows he did not import such cheese at any time during the specified base period, but who did import such cheese in the period January 1, 1951, through August 8, 1951, must submit documentary evidence satisfactory to the Director showing by country of origin the imports of such cheese through customs made in his own name as the importer of record in the period January 1, 1951, through August 8, 1951. In issuing such authorizations, consideration will be given to the percentage which the applicant's imports of such cheese prior to July 1, 1951, constituted of the total imports of such cheese during the part of the period January 1, 1951, through June 30, 1951, beginning with the calendar month in which he began such importations, and such other factors as must be considered to avoid inequities.

(3) Authorizations totaling not in excess of 100,000 pounds will be granted for importation of cheese from particular countries prior to July 1, 1952, to small independent enterprises which are in the business of importing dairy products other than cheese and which have not received any import authorizations under subparagraph (1) or (2) of this paragraph. The amount authorized for any applicant under this subparagraph will not exceed 1,000 pounds. Applications for authorization under this subparagraph must state the country from which the applicant intends to import the cheese and the type of cheese to be imported and must include a statement concerning the size and nature of his business enterprise.

(4) Import authorizations for cheese will be issued to small plants as required by section 714 of the Defense Production Act of 1950, as amended.

(5) Authorizations will be issued for the importation of cheese which was in transit to the United States on August 9, 1951, but amounts so authorized for any importer shall be deducted from amounts of cheese authorized for such importer under subparagraphs (1), (2), or (3) of this paragraph.

(6) Authorizations issued to any applicant in accordance with subparagraph (1) or (2) of this paragraph will specify the quantities which may be imported from each particular country of origin, and such quantities will be based upon the proportionate quantities imported by the applicant from such country during the relevant period prescribed in such subparagraph.

(7) In the administration of this Sub-Order, each of the following classifications is recognized as a type of cheese:

Classification	Description	Commerce import class number
I	Emmentaler or Swiss with eye formation.	0045.100.
II	Gruyere process cheese.	0045.600.
III	Italian.	0046.010 through 0046.250 and 0046.940.
IV	Roquefort.	0046.300.
V	Cheddar (natural).	0046.400.
VI	Blue-mold.	0046.600.
VII	Edam and Gouda.	0046.750 and 0046.700.
VIII	Bryndza, Goya, and all others not specifically mentioned.	0046.800, 0046.950 and 0046.990.

(c) *Procedure re applications.* Applications for import authorizations for any of the products covered by this Sub-Order should be filed with the Director, Office of Requirements and Allocations, Production and Marketing Administration, U. S. Department of Agriculture, Washington 25, D. C. The evidence required by paragraph (a) (1) of this section for casein or lactarene, and mixtures in chief value thereof, and by paragraph (b) (1) and (2) of this section for cheese, should be submitted as a part of applications for import authorization for such products under such paragraphs, as follows. The applicant must submit a summary statement of his importations, during the period specified in subparagraph (a) (1), (b) (1) or (2) of this section, as the case may be, of the particular product for which authorization is desired. This statement must show the following for each entry: The customhouse entry number, port of entry, date of entry, country of origin, name of steamer on arrival, and the quantity in net pounds, exclusive of the weight of the containers. In addition, summary statements listing importations of cheese must show the type of cheese that was imported. The applicant must sign the summary statement, including a statement that it is correct to the best of his knowledge and belief. A customhouse broker should also sign the summary statement, including a statement that the imports specified were made in the name of the applicant as the importer of record or by the custom-

house broker for the account of the applicant. If such a certification is not obtained from a customhouse broker, other evidence concerning the applicant's importations must be submitted. The customs entry with receipt for duty paid will be acceptable for this purpose. If the customs entry and receipt are unavailable, the applicant may submit the consular or commercial invoice, his copies of the letters of credit and bills of lading, and his cancelled checks covering payments for the products involved, or other documentary evidence. These documents will be returned to the applicant.

(d) *Authorizations for first six months of 1952.* Authorizations for the importation during the first six months of 1952 of products covered by this Sub-Order will be issued to importers authorized to import such products under this Sub-Order in 1951 in the form of amendments to the authorizations issued for 1951. The amended authorizations will specify the total amount that the authorization holders may import during the entire period from August 9, 1951, through June 30, 1952. It is not necessary for the 1951 authorization holders to file requests for amendments to their authorizations to cover the first six months of 1952 since such amended authorizations will be issued automatically by the Director.

SEC. 2. Definitions. Terms used in this Sub-Order shall have the same meaning as when used in Defense Food Order 3, as amended.

The principal purpose of this amendment to Sub-Order 2 is to extend for the first six months of 1952 the policies governing the issuance of authorizations under Defense Food Order 3, as amended, for importations of casein or lactarene and cheese during 1951. The amendment also requires the submission of certain information by small business applicants for authorization to import casein or lactarene. In addition minor changes in the Sub-Order are made by the amendment for consistency.

NOTE: All reporting requirements of DFO 3, Sub-Order 2, as amended hereby, have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D. C., this 8th day of November 1951, effective immediately.

[SEAL] F. MARION RHODES,
Director, Office of
Requirements and Allocations.

[F. R. Doc. 51-13766; Filed, Nov. 14, 1951; 11:47 a. m.]

Chapter XXI—Office of Rent Stabilization, Economic Stabilization Agency

[Rent Regulation 3, Amdt. 11 to Schedule A]

RENT REGULATION 3—HOTEL REGULATION

SCHEDULE A—DEFENSE RENTAL AREA

CALIFORNIA AND VIRGINIA

Amendment 11 to Schedule A of Rent Regulation 3—Hotel Regulation. Said regulation is amended in the following respect:

New items 36 and 342c are hereby added to Schedule A as follows:

Name of defense-rental area	State	County or counties in defense-rental area under Rent Regulation 3	Maximum rent date	Effective date of regulation
(36) Barstow.....	California...	In San Bernardino County, the township of Barstow.	May 1, 1951	Nov. 15, 1951
(342c) Newport News-Hampton.	Virginia.....	Independent cities of Hampton and Newport News; and the counties of Warwick, Elizabeth City, and York.	Apr. 1, 1951	Do.

This amendment is issued as a result of joint certifications pertaining to critical defense housing areas by the Secretary of Defense and the Director of Defense Mobilization under section 204 (1) of the Housing and Rent Act of 1947, as amended, and a determination as to the relaxation of real estate construction credit controls under section 204 (m) of said act.

(Sec. 204, 61 Stat. 197, as amended; 50 U. S. C. App. Sup. 1894)

This amendment shall be effective November 15, 1951.

Issued this 9th day of November 1951.

JOHN J. MADIGAN,
Acting Director of Rent Stabilization.

[F. R. Doc. 51-13700; Filed, Nov. 14, 1951;
8:53 a. m.]

TITLE 35—PANAMA CANAL

Chapter I—Canal Zone Regulations

Appendix—Canal Zone Orders

[Canal Zone Order 24]

CONDITIONS OF EMPLOYMENT IN SERVICE OF CANAL ZONE GOVERNMENT ON ISTHMUS OF PANAMA

Amendment of Executive Order No. 1888 of February 2, 1914, as amended, relating to conditions of employment in the service of the Canal Zone Government on the Isthmus of Panama.

By virtue of the authority vested in the President of the United States by section 81 of title 2 of the Canal Zone Code, as amended by section 3 of act of July 9, 1937, 50 Stat. 487, and delegated to me by Executive Order No. 9746 of July 1, 1946, as amended by Executive Order No. 10101 of January 31, 1950, section 6 of Executive Order No. 1888 of February 2, 1914, as last amended by order of the Secretary of War, Canal Zone Order No. 1, of July 1, 1946, is further amended to read as follows:

SEC. 6. No employees shall receive compensation at a rate in excess of \$175 a month or \$1.01 an hour unless they are citizens of the United States or of the Republic of Panama; and such citizens shall be given preference for employment in all grades: *Provided, however,* (a) That persons who are not such citizens may be employed in positions for which the rate of compensation is in excess of \$175 a month or \$1.01 an hour (1) if they occupied the same or similar positions for two years or more during the construction of the Canal, or (2) if such action is deemed necessary by reason of an emergency, in which latter case, however, such persons shall be replaced by

citizens of the United States or of the Republic of Panama as early as practicable; and (b) that the Governor is authorized to increase to rates exceeding \$175 a month or \$1.01 an hour the compensation of such number of employees who are not such citizens as shall at no time exceed 10 percent of the total number of employees who are not such citizens.

FRANK PACE, JR.,
Secretary of the Army.

NOVEMBER 5, 1951.

[F. R. Doc. 51-13667; Filed, Nov. 14, 1951;
8:49 a. m.]

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Federal Security Agency

PART 71—FOREIGN QUARANTINE

PSITTACINE BIRDS; DISPOSITION OF EXCLUDED BIRDS

Notice of proposed rule making having been published and consideration having been given to all relevant matter presented, the proposed amendments to the regulations governing the importation of psittacine birds as set forth in and published with said notice of proposed rule making in 16 F. R. 10464 are hereby adopted and issued. Said amendments shall become effective on December 15, 1951.

[SEAL] LEONARD A. SCHEELE,
Surgeon General.

Approved: November 9, 1951.

JOHN L. THURSTON,
Acting Federal Security Administrator.

1. Section 71.152 is revised to read as follows:

§ 71.152 *Psittacine birds.* (a) The term psittacine birds shall include all birds commonly known as parrots, Amazons, Mexican double heads, African grays, cockatoos, macaws, parakeets, love birds, lorries, lorikeets, and all other birds of the psittacine family.

(b) Except as provided in subparagraphs (1), (2) and (3) of this paragraph, psittacine birds shall not be brought into the continental United States, its territories, or possessions (other than the Canal Zone) from any foreign country or from the Canal Zone.

(1) Birds may be brought in for purposes of medical research under conditions prescribed by the Surgeon General to minimize risk of psittacosis infection if the importer has applied on prescribed forms for permission to bring them in and has received a permit from the Sur-

geon General specifying the number and species of birds that may be brought in.

(2) Birds destined for a zoological park may be brought in if they appear to the quarantine officer to be in good health and if the importer has applied on prescribed forms for permission to bring them in, describing adequate precautions to be taken to prevent transmission of psittacosis, and has received a permit from the Surgeon General specifying the number and species of birds that may be brought in. On arrival at the zoological park the birds shall promptly be isolated for at least thirty days where they will not have contact with other birds or with the public; any bird in isolation which displays symptoms suggestive of psittacosis shall be destroyed and submitted to a competent laboratory for examination. A report of such examination shall be made promptly to the Surgeon General.

(3) Birds not destined for a zoological park and not intended for medical research may be brought in by the owner of the birds if they do not exceed two in number; if the owner has submitted a sworn statement that he has not brought in any other birds under this paragraph in the preceding twelve months, that the birds have been in his possession for the preceding four months, and that they are not intended for sale in the United States; and if they appear to the quarantine officer to be in good health.

2. Section 71.153 is revised to read as follows:

§ 71.153 *Psittacine birds; disposition of excluded birds.* Psittacine birds prohibited from entry under the regulations in this part shall be destroyed or denied entry. Birds that have been denied entry or that have been in contact with sick or infected birds during shipment shall be held in isolation at the owner's expense under conditions approved and for periods of time prescribed by the Surgeon General. Any birds so isolated which display symptoms suggestive of psittacosis shall be destroyed.

(Sec. 215, 58 Stat. 690; 42 U. S. C. 216. Interpret or apply secs. 361-369, 58 Stat. 703-706; 42 U. S. C. 264-272)

[F. R. Doc. 51-13732; Filed, Nov. 14, 1951;
8:59 a. m.]

PART 72—INTERSTATE QUARANTINE

PSITTACINE BIRDS

Notice of proposed rule making having been published and consideration having been given to all relevant matter presented, the proposed amendment to the regulations governing the interstate transportation of psittacine birds as set forth in and published with said notice of proposed rule making in 16 F. R. 10465 is hereby adopted and issued. Said amendment, which relaxes existing restrictions, shall become effective on November 15, 1951.

[SEAL] LEONARD A. SCHEELE,
Surgeon General.

Approved: November 9, 1951.

JOHN L. THURSTON,
Acting Federal Security Administrator.

Section 72.22 is revised to read as follows:

§ 72.22 *Psittacine birds.* (a) The term psittacine birds shall include all birds commonly known as parrots, Amazons, Mexican double heads, African grays, cockatoos, macaws, parakeets, love birds, lorries, lorikeets, and all other birds of the psittacine family.

(b) No person shall transport, or offer for transportation, in interstate traffic any psittacine bird unless the shipment is accompanied by a permit from the State health department of the State of destination where required by such department.

(c) Whenever the Surgeon General finds that psittacine birds or human beings in any area are infected with psittacosis and there is such danger of transmission of psittacosis from such area as to endanger the public health, he may declare it an area of infection. No person shall thereafter transport, or offer for transportation, in interstate traffic any psittacine bird from such area, except shipments authorized by the Surgeon General for purposes of medical research and accompanied by a permit issued by him, until the Surgeon General finds that there is no longer any danger of transmission of psittacosis from such area. As used in this paragraph, the term "area" includes, but is not limited to, specific premises or buildings.

(Sec. 215, 58 Stat. 690; 42 U. S. C. 216. Interprets or applies sec. 361, 58 Stat. 703; 42 U. S. C. 264)

[F. R. Doc. 51-13731; Filed, Nov. 14, 1951; 8:59 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

Subchapter B—Carriers by Motor Vehicle

PART 173—CONTRACTS FOR TRANSPORTATION OF PROPERTY

REQUIREMENT OF CONTRACTS OR AGREEMENTS TO BE IN WRITING

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 6th day of September A. D. 1951.

The matter of individual contracts or agreements of contract carriers by motor vehicle under section 203 (a) (15) and 204 (a) (2) and (6) and 220 (a) of the Interstate Commerce Act (49 U. S. C. 303 (a) (15), 304 (a) (2), (6) and 320 (a)), and the rules prescribed by the Commission, Division 5, on April 21, 1937, requiring contract carriers when transporting property for hire in interstate or foreign commerce to have written contracts therefor (49 CFR 173.2) being under consideration; and

It appearing, that there is need for clarification of said § 173.2; that such clarification does not involve any change in substance; and that notice and public procedure in accordance with section 4 (a) of the Administrative Procedure Act is unnecessary: It is ordered, that § 173.2 be amended to read as follows:

§ 173.2 *Contracts or agreements to be in writing.* No contract carrier by motor

vehicle, as defined in section 203 (a) (15) of the said act, shall transport property for hire in interstate or foreign commerce except under special and individual contracts or agreements which shall be in writing, shall provide for transportation for a particular shipper or shippers, shall be bilateral and impose specific obligations upon both carrier and shipper or shippers, shall cover a series of shipments during a stated period of time in contrast to contracts of carriage governing individual shipments, and copies of which contracts or agreements shall be preserved by the carriers parties thereto so long as such contracts or agreements are in force and for at least one year thereafter.

It is further ordered, that this order shall be effective December 17, 1951, and shall continue in effect until the further order of the Commission.

Notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission, Washington, D. C., and by filing a copy thereof with the Director, Division of the Federal Register.

(49 Stat. 546, as amended; 49 U. S. C. 304. Interprets or applies 49 Stat. 544, as amended; 49 U. S. C. 303)

By the Commission, Division 5.

[SEAL]

W. P. BARTEL,
Secretary.

[F. R. Doc. 51-13702; Filed, Nov. 14, 1951; 8:53 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR Part 964]

[AO 236]

HANDLING OF WATERMELONS GROWN IN DESIGNATED PRODUCTION AREA OF FLORIDA, GEORGIA, AND SOUTH CAROLINA

NOTICE OF HEARING WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and in accordance with the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR 900.1 et seq.), notice is hereby given of a public hearing to be held at the Tift County Courthouse, Tifton, Georgia, beginning at 9:00 a. m., e. s. t., December 6, 1951; Alachua County Courthouse, Gainesville, Florida, beginning at 9:00 a. m., e. s. t., December 10, 1951; Allendale County Courthouse, Allendale, South Carolina, beginning at 9:00 a. m., e. s. t., December 13, 1951, with respect to a proposed marketing agreement and order regulating the handling of

watermelons grown in that part of the State of Florida lying east of the Apalachicola River; the counties of Troup, Meriwether, Pike, Lamar, Butts, Jasper, Putnam, Greene, Oglethorpe, Wilkes, Lincoln, and all counties lying south and southeast thereof in the State of Georgia; and the counties of McCormick, Edgefield, Saluda, Lexington, Richland, Sumter, Clarendon, Williamsburg, Georgetown, and all counties lying south thereof in the State of South Carolina. The proposed marketing agreement and order have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of receiving evidence with respect to economic and marketing conditions which relate to the provisions of the proposed marketing agreement and order hereinafter set forth, or appropriate modification thereof.

Growers and shippers of watermelons produced in the proposed production area submitted, and requested a hearing on, the proposed marketing agreement and order regulating the handling of such watermelons.

DEFINITIONS

§ 964.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, and any other officer or

employee of the United States Department of Agriculture, who is, or may hereafter be, authorized to act in his stead.

§ 964.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.).

§ 964.3 *Person.* "Person" means an individual, partnership, corporation, association, or any organized group or business unit.

§ 964.4 *Watermelons.* "Watermelons" means all varieties of watermelons (including, but not being limited to the Garrison, Dixie Queen, Cannon Ball or Black Diamond, Congo, Tom Watson, Black Lee, Ironside, Hawksbury, Lee Gray, Thurmond Gray, and any other varieties) grown in the production area.

§ 964.5 *Handler.* "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of watermelons owned by another person) who ships watermelons.

§ 964.6 *Ship or handle.* "Ship" or "handle" means to transport, sell, consign, or in any way to place, or have placed, watermelons in the current of commerce within the production area

or between the production area and any point outside thereof. The term "ship" or "handle" does not include the sale of unharvested watermelons.

§ 964.7 *Grower or producer.* "Grower" or "producer" means any person engaged in the growing of watermelons for market, and who has a proprietary interest therein.

§ 964.8 *Eligible grower.* "Eligible grower" means any person who is a grower but not a handler, and any person who is both a grower and a handler, and whose handling of watermelons produced by others constitutes less than 25 percent of the total number of watermelons handled by such person during the preceding fiscal year.

§ 964.9 *Eligible handler.* "Eligible handler" means any person who is a handler but not a grower, and any person who is both a handler and a grower, and whose handling of watermelons produced by others constitutes at least 25 percent of the total number of watermelons handled by such person during the preceding fiscal year.

§ 964.10 *Fiscal year.* "Fiscal year" means the period beginning on April 1 of each year and ending March 31 of the following year, both dates inclusive.

§ 964.11 *Committee or administrative committee.* "Committee" or "administrative committee" means the Southeastern Watermelon Committee established pursuant to § 964.24.

§ 964.12 *Size.* "Size" means weight.

§ 964.13 *Whiteheart.* "Whiteheart" means a physiological defect characterized by a hard white streak of flesh extending lengthwise through the central portion of a watermelon.

§ 964.14 *U. S. No. 1.* "U. S. No. 1" means the U. S. No. 1 grade as such term is defined in the United States Standards for Watermelons (16 F. R. 10331).

§ 964.15 *Mature.* The term "mature" shall have the same meaning as set forth for such term in the United States Standards for Watermelons (16 F. R. 10331).

§ 964.16 *Production area.* "Production area" means that part of the State of Florida lying east of the Appalachicola River; the counties of Troup, Meriwether, Pike, Lamar, Butts, Jasper, Putnam, Greene, Oglethorpe, Wilkes, and Lincoln, and all counties lying south and southeast thereof in the State of Georgia; and the counties of McCormick, Edgefield, Saluda, Lexington, Richland, Sumter, Clarendon, Williamsburg, and Georgetown, and all counties lying south thereof in the State of South Carolina.

§ 964.17 *District.* "District" means any one or more of the following: District No. 1 or South Florida; District No. 2 or North Florida; District No. 3 or South Georgia; District No. 4 or Middle Georgia; and District No. 5 or South Carolina.

§ 964.18 *District No. 1 or South Florida.* "District No. 1" or "South Florida" means that part of the State of Florida consisting of the counties of Citrus,

Marion, Putnam, and Flagler, and all counties lying south thereof.

§ 964.19 *District No. 2 or North Florida.* "District No. 2" or "North Florida" means that part of the State of Florida included within the production area but not included in District No. 1.

§ 964.20 *District No. 3 or South Georgia.* "District No. 3" or "South Georgia" means that part of the State of Georgia consisting of the counties of Quitman, Randolph, Terrell, Lee, Worth, Turner, Ben Hill, Coffee, Bacon, Pierce, Brantley, and Glynn, and all counties lying south thereof.

§ 964.21 *District No. 4 or Middle Georgia.* "District No. 4" or "Middle Georgia" means that part of the State of Georgia included within the production area but not included in District No. 3.

§ 964.22 *District No. 5 or South Carolina.* "District No. 5" or "South Carolina" means that part of the State of South Carolina included within the production area.

ADMINISTRATIVE COMMITTEE

§ 964.24 *Establishment and membership—(a) Establishment.* The Southeastern Watermelon Committee consisting of nine members, of whom six shall be growers and three shall be handlers, is hereby established. For each member of the committee there shall be an alternate member who shall have the same qualifications as the member; and, unless otherwise specified, all provisions of this subpart applicable to the member shall be applicable to the alternate.

(b) *Membership representation—(1) Grower.* Two growers in District No. 5 and one grower in each of the other districts shall be selected to serve on the committee. Each person selected to serve as a grower member of the committee shall be an eligible grower in, and resident of, the district from which selected or an officer, employee, or agent of such eligible grower.

(2) *Handler.* One handler in each State, included in the production area, shall be selected to serve on the committee. Each person selected to serve as a handler member of the committee shall be an eligible handler in, and resident of, that part of the State included within the production area from which selected, or an officer, employee, or agent of such eligible handler.

§ 964.25 *Term of office.* (a) The term of office of each member of the committee shall be one fiscal year. In the event a successor to any such member has not been selected and has not qualified by the end of the then current fiscal year, such member shall continue to serve until his successor is selected and has qualified. Each committee member shall serve during the fiscal year for which he is selected and has qualified, and shall commence so to serve on the date on which he qualifies.

(b) The consecutive terms of office of a member of the committee shall be limited to three terms. The consecutive terms of office of alternate members shall not be so limited.

§ 964.26 *Selection.* The Secretary shall select two grower members and their respective alternates from District No. 5, and one grower member and his alternate from each of the other districts, which members and alternates shall represent their respective districts. The Secretary shall also select as handler members and alternates of the committee: (a) One member and his alternate from District No. 1 and District No. 2; (b) one member and his alternate from District No. 3 and District No. 4; and (c) one member and his alternate from District No. 5, which members and alternates shall represent their respective districts.

§ 964.27 *Nominations—(a) Initial members.* Nominations for initial grower members of the committee may be submitted by eligible growers or groups thereof, including trade and marketing associations thereof. Nominations for initial handler members of the committee may be submitted by eligible handlers or groups thereof, including trade and marketing associations thereof. Such nominations for grower members may be by virtue of elections conducted by groups of eligible growers and such nominations for handler members may be by virtue of elections conducted by groups of eligible handlers.

(b) *Successor members.* In order to provide for nominations for successor committee members:

(1) The committee may hold, or cause to be held, prior to February 15 of each year a meeting or meetings of growers in each district, and a meeting or meetings of handlers in each State in the production area.

(2) In arranging for such meeting or meetings, the committee may utilize the services and facilities of existing organizations and agencies.

(3) At each meeting at least two nominees shall be designated for each position as member and for each position as alternate on the committee.

(4) After nominations of persons for membership on the committee have been obtained, the Secretary may give opportunity to eligible growers and eligible handlers to indicate their choice from among the nominees by means of ballots. Balloting shall be done in such manner and on such forms as the Secretary may prescribe.

(5) Only eligible growers may participate in grower nomination meetings and in the balloting held in connection therewith. Each such grower shall be entitled to cast but one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives, for each grower member position and each alternate grower member position on the committee: *Provided*, That in the event such person is an eligible grower in more than one district he shall choose the district in which he will participate, as aforesaid.

(6) Only eligible handlers may participate in handler nomination meetings and in the balloting held in connection therewith. Each such handler shall be entitled to cast but one vote on behalf of himself, his agents, subsidiaries, affil-

lates, and representatives, for each handler member position and each handler alternate member position on the committee: *Provided*, That in the event such person is an eligible handler in more than one State of the production area, he shall choose the State in which he will participate, as aforesaid.

(7) Nominations for committee members shall be supplied to the Secretary not later than 30 days prior to the end of each fiscal year in such manner and form as the Secretary may prescribe.

§ 964.28 *Failure to nominate*. If nominations are not supplied to the Secretary within the time and in the manner and form specified by the Secretary pursuant to § 964.27 (b) (7), the Secretary may, without regard to nominations, select the committee members on the basis of the representation provided by § 964.24 (b).

§ 964.29 *Acceptance*. Each person selected by the Secretary as a member of the committee shall, prior to serving on the committee, qualify by filing a written acceptance with the Secretary within 15 days after being notified of such selection.

§ 964.30 *Vacancies*. To fill any vacancy occasioned by the failure of any person selected as a member of the committee to accept or qualify, or in the event of the death, removal, resignation, or disqualification of a member, a successor for his unexpired term may be selected by the Secretary from previously unselected nominees on the current nominee list from the district or districts involved. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of representation provided for in § 964.24 (b).

§ 964.31 *Alternate members*. An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence. In the event of death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for the unexpired term of said member is selected and has qualified.

§ 964.32 *Procedure; organization and rules*. (a) The committee may organize upon the selection and qualification of 5 of its members. It may hold meetings only after due notice to its members. The Secretary shall be given the same notice of the meetings of the committee as is given to the members of the committee. The Secretary may designate the time and place of the initial meeting of the committee.

(b) Five members of the committee, including alternate members then serving in the place and stead of any members, in attendance at the meeting, shall be necessary to constitute a quorum, and all decisions of the committee shall require not less than five concurring votes of the members who are present at such meeting: *Provided*, That, all decisions of the committee pursuant to § 964.50

(b) shall require 7 concurring votes of the members present at such meeting.

(c) The committee may provide for a meeting by telephone, telegraph, or other means of communication, upon due notice to all members, and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

§ 964.33 *Compensation*. Committee members shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart, and shall receive compensation, at a rate to be determined by the committee, which rate shall not exceed \$10.00 for each full day spent in attending meetings of the committee.

§ 964.34 *Powers*. The committee shall have the following powers:

(a) To administer the provisions of this subpart in accordance with their terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 964.35 *Duties*. It shall be the duty of the committee:

(a) To act as intermediary between the Secretary and any grower or handler;

(b) At the beginning of each fiscal year, to meet and organize, to select from among its membership a chairman and such other officers as may be necessary, to select subcommittees composed of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(c) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(d) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to watermelons; and to engage in such research and service activities which relate to the handling of watermelons as may be approved by the Secretary;

(e) To furnish to the Secretary information as to all of its activities, including a copy of the minutes of each meeting, and such other information as he may request;

(f) To keep minutes, books, and records, which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to growers and handlers the committee voting record on recommended regulations and on matters of policy;

(h) At the beginning of each fiscal year to prepare and submit to the Secretary a budget of its proposed expenses for such fiscal year, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal year, and at such other times as the committee may deem necessary or as the Secretary may request, which report shall show the receipt and expenditure of funds collected pursuant to this subpart, a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by growers and handlers, and

(j) To consult, cooperate, and exchange information at the discretion of the committee with other watermelon marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

EXPENSES AND ASSESSMENTS

§ 964.38 *Use of funds collected*. All funds received by the committee pursuant to any provision of this subpart shall be used only for the purposes authorized in this subpart.

§ 964.39 *Budget and expenses*. The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during the then current fiscal year for its maintenance and functioning and for such purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The recommendations of the committee as to its expenses for the initial fiscal year together with data supporting such recommendation, shall be submitted to the Secretary within 45 days from the effective date of this subpart.

§ 964.40 *Assessments*. (a) Each handler who first ships watermelons shall, with respect to such watermelons, pay to the committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds will be incurred, as aforesaid, by the committee during the then current fiscal year. Each such handler's pro rata share of such expenses shall be equal to the ratio between the total quantity of watermelons handled by him as the first handler thereof during the applicable fiscal year and the total quantity of watermelons handled by all handlers as the first handler thereof during the same fiscal year.

(b) In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

§ 964.41 *Rate of assessment*. (a) The Secretary shall fix the rate of assessment to be paid by such handlers and such rate may be fixed upon the basis of the committee recommendation and other available information applicable thereto.

(b) The Secretary may increase the rate of assessment at any time during a fiscal year in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Any such increase in the rate of assessment shall be applicable to all watermelons handled as aforesaid, during said fiscal year.

§ 964.42 *Refunds.* If, at the end of a fiscal year, the assessments collected are in excess of expenses incurred, each handler entitled to a proportionate refund of the excess assessments shall be credited with such refund against the operations of the following fiscal year, unless he demands payment thereof, in which event such proportionate refund shall be paid to him.

§ 964.43 *Accountability of committee members.* The Secretary may at any time require the committee, its members, employees, agents, and all other persons to account for all receipts and disbursements for which they are responsible. Whenever any person ceases to be a member of the committee, he shall account to his successor or to the committee for all receipts, disbursements, funds and property (including but not being limited to books and other records), pertaining to the committee's activities for which he is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor or the committee the right to all of such property and funds and all claims vested in such person.

REGULATION

§ 964.48 *Marketing policy.* (a) At the beginning of each fiscal year the committee shall consider, prepare and submit to the Secretary a report setting forth its proposed policy for the handling of watermelons during such fiscal year.

(b) In developing the marketing policy, the committee shall investigate supply and demand conditions for grades, sizes, and qualities of watermelons of all varieties. In such investigations, the committee shall give appropriate consideration to the following: (1) Market prices of watermelons, including prices by grade, size, and quality in wholesale shipping units; (2) watermelons on hand in the terminal markets as manifested by supplies en route or on track at the principal markets; (3) supplies of watermelons by grade, size, and quality, in the production area and other producing areas; (4) the trend and level of consumer income; and, (5) other relevant factors.

(c) In the event it becomes advisable to deviate from such marketing policy, because of changed demand and supply conditions, the committee shall formulate a revised marketing policy and shall submit a report thereon to the Secretary.

(d) The committee shall notify growers and handlers of the contents of each such report.

§ 964.49 *Recommendations for regulations.* (a) The committee shall recommend regulation to the Secretary in accordance with the provisions of § 964.50 whenever it finds, on the basis of the foregoing investigations, that such regulation, as provided in § 964.50, will tend to effectuate the declared purposes of the act.

(b) The committee may also recommend modification of the regulation set forth in § 964.51, or any modification thereof, if it determines that such modification

would tend to effectuate the declared policy of the act.

(c) The committee may also recommend modification, suspension or termination of any regulation in order to facilitate shipments of watermelons for the specified purposes set forth in § 964.53.

(d) Unless 7 or more members of the committee concur in the recommendation, no grade regulation may be recommended which prohibits the shipment of watermelons grading better than U. S. No. 1 with a total tolerance of 20 percent for all defects: *Provided*, That of said tolerance (1) not more than a total of 5 percent, by count, of the watermelons in the shipment may be watermelons that are not mature, (2) not more than a total of 10 percent, by count, of the watermelons in the shipment (including the watermelons that are not mature) may be watermelons that are not free from whiteheart, and (3) not more than a total of 1 percent, by count, of the watermelons in the shipment may be watermelons that are not free from decay.

§ 964.50 *Issuance of regulations.* (a) The Secretary shall limit the shipment of watermelons as set forth in this subpart, whenever he finds from the recommendations and information submitted by the committee, or from other available information, that it would tend to effectuate the declared policy of the act. Such limitation may: (1) Regulate, in any or all districts of the production area, the shipment of particular grades and sizes of all varieties of watermelons during any period; or (2) regulate the shipment of particular grades and sizes of watermelons differently for different districts of the production area during any period; or (3) regulate in any or all districts of the production area, the shipment of watermelons by establishing in terms of grades, sizes or both, minimum standards of quality and maturity.

(b) Unless 7 or more members of the committee concur in the recommendation, no grade regulation may be made effective which prohibits the shipment of watermelons grading better than U. S. No. 1 with a total tolerance of 20 percent for all defects: *Provided*, That of said tolerance (1) not more than a total of 5 percent, by count, of the watermelons in the shipment may be watermelons that are not mature, (2) not more than a total of 10 percent, by count, of the watermelons in the shipment (including the watermelons that are not mature) may be watermelons that are not free from whiteheart, and (3) not more than a total of 1 percent, by count, of the watermelons in the shipment may be watermelons that are not free from decay.

(c) The Secretary may suspend or terminate regulations issued pursuant to §§ 964.40, 964.50, 964.51 and 964.66, or any combination thereof, dealing with the shipment of watermelons from any district or districts of the production area whenever he determines, upon the basis of the recommendations of the committee or from other available information, that the shipments of watermelons from such district or districts are

virtually complete for the current fiscal year and that subsequent shipments from such district or districts during such fiscal year will not be of sufficient volume as to warrant further regulation.

(d) The Secretary shall notify the committee of any such regulation, suspension, and termination, and the committee shall give reasonable notice thereof to handlers.

§ 964.51 *Initial regulations.* Beginning at such time after the effective date of this subpart as the Secretary may specify, and continuing until modified by order of the Secretary, no person shall ship any watermelons unless such watermelons (a) are mature, and (b) are free from whiteheart: *Provided*, That (a) not more than a total of 5 percent, by count, of the watermelons in the shipment may be watermelons that are not mature, (b) not more than a total of 10 percent, by count, of the watermelons in the shipment (including the watermelons that are not mature) may be watermelons that are not free from whiteheart, and (c) not more than a total of 1 percent, by count, of the watermelons in the shipment may be watermelons that are not free from decay.

§ 964.52 *Minimum quantities.* The committee, with the approval of the Secretary, may establish for any or all portions of the production area, minimum quantities below which shipments will be free from regulation set forth in, or issued pursuant to, §§ 964.40, 964.50, 964.51 and 964.66, or any combination thereof.

§ 964.53 *Shipments for specified purposes.* The Secretary, upon the basis of recommendations of the committee or upon the basis of other available information, may modify, suspend, or terminate regulations or requirements pursuant to, §§ 964.40, 964.50, 964.66, or any combination thereof, in order to facilitate shipments of watermelons for any one or more of the following purposes, whenever he finds that such action will tend to effectuate the declared policy of the act:

(a) Shipments of watermelons within the production area for the purpose of having such watermelons graded in the production area;

(b) Shipments of watermelons for distribution by the Federal Government for specified purposes;

(c) Shipments of watermelons for the purpose of having such watermelons manufactured or converted into specified products or by-products;

(d) Shipments of watermelons for seed;

(e) For other purposes, which the Secretary may specify.

§ 964.54 *Safeguards.* (a) The committee, with approval of the Secretary, may prescribe (1) adequate safeguards to prevent shipments pursuant to § 964.53 from entering channels of trade contrary to the provisions of this subpart, and (2) rules governing the issuance and the contents of Certificates of Privilege if such certificates are required.

(b) The safeguards authorized under this part may include, a requirement that:

(1) A shipment of watermelons pursuant to § 964.53 may be made only after the issuance by the committee, upon written application by the handler, of a Certificate of Privilege, setting forth the quantity of such watermelons and the specific purpose for which shipment may be made.

(c) The committee shall have the right to refuse to issue any Certificate of Privilege and the right to rescind any previously issued Certificate of Privilege, if the committee finds that watermelons shipped pursuant to § 964.53 were handled contrary to the provisions of this part.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificate issued by the committee pursuant to the provisions of this section.

(e) The committee shall make periodic reports to the Secretary, showing the number of applications for such certificates, the quantity of watermelons covered by such applications, the number of such applications denied and certificates granted, the quantity of watermelons shipped under duly issued certificates, and such other information as may be requested.

EXEMPTIONS

§ 964.61 *Procedure.* The committee may adopt, with the approval of the Secretary, the procedures pursuant to which certificates of exemptions will be issued to growers.

§ 964.62 *Granting exemptions.* (a) The committee may issue certificates of exemption to any grower who applies for such exemption and furnishes adequate evidence to the committee that: (1) By reason of a regulation issued pursuant to § 964.50 he will be prevented from shipping as large a proportion of his production during the then current fiscal year as the estimated average proportion of production to be shipped by all growers in said applicant's immediate producing area, and that (2) the grade, or size, or both, of the applicant's watermelons have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the grower to ship, or have shipped, the amount of watermelons specified thereon: *Provided*, That, no such exemption certificate shall permit the shipment of watermelons that are not free from white-heart, or that are not mature, or that are not free from decay except to the extent allowed by a regulation or requirement then in effect pursuant to § 964.50 or § 964.51. Such certificate shall be transferred with such watermelons at time of shipment.

(b) The committee shall be permitted at any time to make a thorough investigation of any grower's or handler's claim pertaining to exemptions.

§ 964.63 *Appeal.* (a) If any applicant for an exemption certificate is dissatisfied with the determination of the committee with respect to his application, said applicant may file an appeal with the committee. The appeal must be filed promptly after such determination by the committee. Any applicant

filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all the available evidence, and make a determination concerning the application; and such determination shall be final. The committee shall notify the appellant of the final determination and shall furnish the Secretary with a copy of the appeal and the final determination, supported by a statement of considerations involved in making the determination.

(b) The Secretary shall have the right to modify, change, alter or rescind any procedure and any exemptions granted pursuant to this section.

(c) The committee shall maintain a record of all applications submitted for exemption certificates, of all exemption certificates issued and denied, of the quantities of watermelons covered by such exemption certificates, of appeals for reconsideration of applications and final determination with respect thereto and such other information as may be requested by the Secretary. Periodic reports on such records shall be submitted by the committee to the Secretary upon his request.

INSPECTION

§ 964.66 *Inspection and certification.* During any period in which shipments of watermelons are regulated pursuant to this subpart, each handler shall, prior to making each shipment of watermelons, cause each such shipment to be inspected by an authorized representative of the Federal Inspection Service or the Federal-State inspection service or such other inspection service as the Secretary shall designate: *Provided*, That the regrading, resorting, repacking, commingling, or further preparation of inspected watermelons for market shall invalidate prior inspection thereon, and each handler who ships watermelons after such watermelons are regraded, resorted, repacked, commingled or in any way further prepared for market, shall have such shipment inspected, as provided in this subpart: *Provided further*, That the aforesaid inspection requirements shall, with respect to a particular shipment, be deemed to have been complied with when such shipment had been previously inspected by such inspection service, and an appropriate certificate or memorandum issued in connection therewith. Each handler shall, promptly after making shipment of watermelons, submit to the committee a copy of the inspection certificate or memorandum issued with respect thereto.

MISCELLANEOUS

§ 964.71 *Reports.* Upon the request of the committee, with approval of the Secretary, every handler shall furnish to the committee, in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its powers and perform its duties under this subpart.

§ 964.72 *Compliance.* Except as provided in this subpart, no handler shall ship watermelons, the shipment of which has been prohibited, in accord-

ance with provisions of this subpart, and no handler shall ship watermelons except in conformity to the provisions of this subpart.

§ 964.73 *Rights of the Secretary.* The members of the committee, including successors and alternates thereof, and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, determination, decision, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 964.74 *Amendment.* Amendments to this subpart may be proposed, from time to time by the committee or by the Secretary.

§ 964.75 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 964.76 *Agents.* The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 964.77 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 964.78 *Personal liability.* No member or alternate of the committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 964.79 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof, to any other person, circumstance, or thing, shall not be affected thereby.

§ 964.80 *Effective time.* The provisions of this subpart shall become effective at such time as the Secretary may declare above his signature attached to this subpart, and shall continue in force until terminated in one of the ways specified in this subpart.

§ 964.81 *Termination.* (a) The Secretary may, at any time, terminate the pro-

visions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal year whenever he finds that such termination is favored by a majority of growers who, during the preceding fiscal year, have been engaged in the production of watermelons for market: *Provided*, That such majority has, during such year, produced for market more than fifty percent of the volume of such watermelons produced for market; but such termination shall be effective only if announced on or before March 1 of the then current fiscal year.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(e) The Secretary shall terminate the provisions of this subpart at the end of any fiscal year, upon the written request of handlers signatory to this subpart who submit evidence satisfactory to the Secretary that they handled not less than sixty-seven percent of the total volume of watermelons handled by the signatory handlers during the preceding fiscal year; but such termination shall be effective only if announced on or before March 1 of the then current fiscal year.¹

§ 964.82 Proceedings after termination. (a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as trustees (for the purpose of liquidating the affairs of the committee) of all funds and the property then in the possession of, or under control of the committee, including claims for any funds unpaid, or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all funds and property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any funds collected or received pursuant to § 964.40 and held by such trustees or person over and above amounts necessary to meet outstanding obligations and the expenses necessarily

incurred by the trustees or such other person, in the performance of their duties under this subpart, shall as soon as practical after the termination of the provisions of this subpart, be disbursed among the handlers pro rata in proportion to their contributions pursuant to this subpart.

(d) Any person to whom funds, property, or claims have been transferred, or delivered by the committee or its members, pursuant to this section shall be subject to the same obligations imposed upon the members of the said committee and upon the said trustees.

§ 964.83 Effect of termination or amendment. Unless otherwise expressly provided by the Secretary, the termination of this subpart, or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen, or which may thereafter arise in connection with any provision of this subpart, or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart, or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary, or of any other person with respect to any such violation.

§ 964.84 Counterparts. This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute when taken together, one and the same instrument as if all signatures were contained in one original.¹

§ 964.85 Additional parties. After the effective date of this subpart, any handler who has not previously executed this agreement may become a party to this subpart if a counterpart of this subpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.¹

§ 964.86 Order with marketing agreement. Each signatory handler favors and approves the issuance of an order, by the Secretary, regulating the handling of watermelons in the same manner as is provided for in this agreement; and each signatory handler hereby requests the Secretary to issue, pursuant to the act, such an order.¹

Copies of this notice of hearing may be procured from the Hearing Clerk, United States Department of Agriculture, Room 1353, South Building, Washington, D. C., or may be there inspected.

Issued at Washington, D. C. this 9th day of November 1951.

[SEAL]

ROY W. LENNARTSON,
Assistant Administrator.

[F. R. Doc. 51-13712; Filed, Nov. 14, 1951; 8:56 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 1, 31]

[Docket No. 10082]

RADIO BROADCAST SERVICES

NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of Parts 1 and 3 of the Commission's rules, section 13 of the Standards of Good Engineering Practice Concerning Standard Broadcast Stations, section 9 of the Standards of Good Engineering Practice Concerning FM Broadcast Stations and section 10 of the Standards of Good Engineering Practice Concerning Television Broadcast Stations to provide for interchange of indicating instruments and operation without certain indicating instruments upon stated conditions; Docket No. 10082.

1. Notice is hereby given of proposed rule-making in the above entitled matter.

2. The provisions of Parts 1 and 3 of the Commission's rules and regulations and section 13 of the Standards of Good Engineering Practice Concerning Standard Broadcast Stations, section 9 of the Standards of Good Engineering Practice Concerning FM Broadcast Stations and section 10 of the Standards of Good Engineering Practice Concerning Television Broadcast Stations require broadcast station licensees to obtain authorization from the Commission when it becomes necessary to operate without or to replace certain indicating instruments.

3. It is proposed to amend the foregoing provisions of the Commission's rules and standards to eliminate the requirement for application and authorization to operate with the indicating instruments presently required by the Commission's rules under stated conditions for a period not to exceed 60 days to allow for the repair or replacement of such instruments. It is also proposed to amend the foregoing provisions of the Commission's rules to provide that extensions of authority to operate without such indicating instruments for a period of more than 60 days will be considered and acted upon by the Engineers in charge of the Commission's field offices. The proposed amendments are set forth below.

4. It appears that the technical operation of Standard, FM and Television broadcast stations in accordance with the Commission's rules may be maintained without such indicating instruments under the conditions provided herein.

5. Authority for the adoption of the proposed amendments is contained in sections 4 (i), 5 (e) and 303 (r) of the Communications Act of 1934, as amended.

6. Any interested party who is of the opinion that the proposal herein should or should not be adopted or should not be adopted in the form set forth may file on or before December 3, 1951 a written statement or brief setting forth his comments. Comments or briefs in reply to

¹ Applicable only to the proposed marketing agreement.

the original comments or briefs may be filed on or before December 18, 1951. The Commission will consider all comments, briefs and replies presented before taking final action with respect to the proposed rules. Should it appear from the comments or replies received by the Commission that oral argument is warranted, notice of the time and place will be given.

7. Fifteen copies of each brief, written statement or reply should be filed in accordance with § 1.764 of the Commission's rules and regulations.

Adopted: November 7, 1951.

Released: November 8, 1951.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] T. J. SLOWIE,
Secretary.

1. Delete § 3.54 and substitute the following:

§ 3.54 *Operating power; direct measurement.* The antenna input power determined by direct measurement is the square of the antenna current times the antenna resistance at the point where the current is measured and at the operating frequency. Direct measurement of the antenna input power will be accepted as the operating power of the station, provided the data on the antenna resistance measurements are submitted under oath giving detailed description of the method used and the data taken. The antenna current shall be measured by an ammeter of accepted accuracy.²¹ These data must be submitted to and approved by the Commission before any licensee will be authorized to operate by this method of power determination.²² If any change is made in the antenna system or any change made which may affect the antenna system, the method of determining operating power shall be changed immediately to the indirect method. (See Further Requirements for Direct Measurements of Power.)

2. Delete § 3.55 and substitute the following:

§ 3.55 *Modulation.* (a) A licensee of a broadcast station will not be authorized to operate a transmitter unless it is capable of delivering satisfactorily the authorized power with a modulation of at least 85 percent. When the transmitter is operated with 85 percent modulation, not over 10 percent combined audio frequency harmonics shall be generated by the transmitter.

(b) Each standard broadcast station shall have in operation at the transmitter a modulation monitor of a type approved by the Commission. (See Approved Modulation Monitors and also Requirements for Approval of Modulation Monitors.)

(c) In the event that the modulation monitor becomes defective the station

may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of station showing the date and time the monitor was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the monitor is found to be defective and immediately after the repaired or replacement monitor has been installed and is functioning properly.

(3) The degree of modulation of the station shall be monitored with a cathode ray oscilloscope or other acceptable means.

(d) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

(e) The operating percentage of modulation of all stations shall be maintained as high as possible consistent with good quality of transmission and good broadcast practice and in no case less than 85 percent on peaks of frequent recurrence during any selection which normally is transmitted at the highest level of the program under consideration.

3. Delete § 3.58 and substitute the following:

§ 3.58 *Indicating instruments.* (a) Each standard broadcast station shall be equipped with indicating instruments which conform with the specifications set forth in the Standards of Good Engineering Practice Concerning Standard Broadcast Stations for measuring the DC plate circuit current and voltage of the last radio frequency amplifier stage; the radio frequency base current of each antenna element; and, for stations employing directional antenna systems, the radio frequency current at the point of common input to the directional antenna. (See Indicating Instruments Pursuant to § 3.58).

(b) In the event that any one of these indicating instruments becomes defective when no substitute which conforms with the required specifications is available, the station may be operated without the defective instrument pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station showing the date and time the meter was removed from and restored to service.

(2) The Engineer-in-Charge of the radio district in which the station is located shall be notified both immediately after the instrument is found to be defective and immediately after the repaired or replacement instrument has been installed and is functioning properly.

(3) If the defective instrument is a remote antenna ammeter, the antenna base current shall be read and logged once daily for each mode of operation.

(4) If the defective instrument is the antenna current meter on a nondirectional station which does not employ a remote antenna ammeter, or if the defective instrument is the common point meter on a station which employs a directional antenna, and does not employ a remote common point meter, the operating power shall be determined by the indirect method in accordance with § 3.52 during the entire time the station is operated without an antenna current meter or a common point meter.

(c) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

4. Delete § 3.60 and substitute the following:

§ 3.60 *Frequency monitor.* (a) Each standard broadcast station shall have in operation at the transmitter a frequency monitor independent of the frequency control of the transmitter. The frequency monitor shall be of a type approved by the Commission and shall have a stability and accuracy of at least five parts per million. (See Approved Frequency Monitors and also Requirements for Approval of Frequency Monitors.)

(b) In the event that the frequency monitor becomes defective the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station showing the date and time the monitor was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the monitor is found to be defective and immediately after the repaired or replacement monitor has been installed and is functioning properly.

(3) The frequency of the station shall be measured by an external source at least once each seven days and the results entered in the station log.

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

5. Delete § 3.252 and substitute the following:

§ 3.252 *Frequency monitor.* (a) Each FM broadcast station shall have in operation at the transmitter a frequency monitor independent of the frequency control of the transmitter. The frequency monitor shall be of a type ap-

²¹ See Indicating Instruments pursuant to § 3.58.

²² Formal application required. See Standards of Good Engineering Practice for form number.

proved by the Commission. (See Approved Frequency Monitors and also Requirements for Type Approval of Frequency Monitors in the Standards of Good Engineering Practice Concerning FM Broadcast Stations.)

(b) In the event that the frequency monitor becomes defective the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station showing the date and time the monitor was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the monitor is found to be defective and immediately after the repaired or replacement monitor has been installed and is functioning properly.

(3) During the period when the station is operated without the frequency monitor the licensee shall provide suitable means for insuring that the operating frequency is maintained within the tolerance prescribed in § 3.269.

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

6. Delete § 3.253 and substitute the following:

§ 3.253 *Modulation monitor.* (a) Each FM broadcast station shall have in operation at the transmitter a modulation monitor of a type approved by the Commission. (See Approved Frequency Monitors and also Requirements for Type Approval of Modulation Monitors in the Standards of Good Engineering Practice Concerning FM Broadcast Stations.)

(b) In the event that the modulation monitor becomes defective the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station showing the date and time the monitor was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the monitor is found to be defective and immediately after the repaired or replacement monitor has been installed and is functioning properly.

(3) During the period when the station is operated without the modulation monitor the licensee shall provide suitable means for insuring that the modulation is maintained within the tolerance prescribed in § 3.268.

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the above allowed period, informal request

may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

7. Amend § 3.257 as follows: Delete paragraph (c) and redesignate paragraph (d) as paragraph (c).

8. Add new § 3.258 as follows:

§ 3.258 *Indicating instruments.* (a) Each FM broadcast station shall be equipped with indicating instruments, which conform with the specifications set forth in the Standards of Good Engineering Practice Concerning FM Broadcast Stations, for measuring the direct plate voltage and current of the last radio stage and the transmission line radio frequency current, voltage or power. (See Indicating Instruments Pursuant to § 3.258 in the Standards of Good Engineering Practice Concerning FM Broadcast Stations.)

(b) In the event that any one of these indicating instruments becomes defective when no substitute which conforms with the required specifications is available, the station may be operated without the defective instrument pending its repair or replacement for a period not in excess of 60 days: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station showing the date and time the meter was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified immediately after the instrument is found to be defective and immediately after the repaired or replaced instrument has been installed and functioning properly.

(3) If the defective instrument is a plate voltmeter or plate ammeter in the last radio stage, the operating power shall be maintained by means of the radio frequency transmission line meter.

(c) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

9. Delete § 3.552 and substitute the following:

§ 3.552 *Frequency monitor.* (a) Each non-commercial FM broadcast station licensed for a transmitter power output above 10 watts shall have in operation at the transmitter a frequency monitor independent of the frequency control of the transmitter. The frequency monitor shall be of a type approved by the Commission. (See Approved Frequency Monitors and Requirements for Type Approval of Frequency Monitors in the Standards of Good Engineering Practice Concerning FM Broadcast Stations.)

(b) In the event that the frequency monitor becomes defective the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station showing the date and time the monitor was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the monitor is found to be defective and immediately after the repaired or replacement instrument has been installed and is functioning properly.

(3) During the period when the station is operated without the frequency monitor the licensee shall provide suitable means for insuring that the operating frequency is maintained within the tolerance prescribed in § 3.569.

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

(d) The licensee of each non-commercial educational FM broadcast station licensed for transmitter power output of 10 watts or less shall provide for the measurement of the station frequency by a means independent of the frequency control of the transmitter. The station frequency shall be measured (1) when the transmitter is initially installed, (2) at any time the frequency determining elements are changed, and (3) at any time the licensee may have reason to believe the frequency has shifted beyond the tolerance specified by the Commission's rules.

10. Delete § 3.553 and substitute the following:

§ 3.553 *Modulation monitor.* (a) Each non-commercial FM broadcast station licensed for transmitter power output above 10 watts shall have in operation at the transmitter a modulation monitor of a type approved by the Commission. (See Approved Modulation Monitors and also Requirements for Type Approval of Modulation Monitors in the Standards of Good Engineering Practice Concerning FM Broadcast Stations.)

(b) In the event that the modulation monitor becomes defective the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station showing the date and time the monitor was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the monitor is found to be defective and immediately after the repaired or replacement monitor has been installed and is functioning properly.

(3) During the period when the station is operated without the modulation monitor the licensee shall provide suitable means for insuring that the modulation is maintained within the tolerance prescribed in § 3.568.

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the above

allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

(d) The licensee of each non-commercial educational FM broadcast station licensed for transmitter power output of 10 watts or less shall provide a percentage modulation indicator or a calibrated program level meter from which a satisfactory indication of the percentage of modulation of the transmitter can be determined.

11. Amend § 3.557 as follows: Delete paragraph (c) and redesignate paragraph (d) as paragraph (c).

12. Add new § 3.558 as follows:

§ 3.558 *Indicating instruments.* (a) Each non-commercial FM broadcast station licensed for transmitter power above 10 watts shall be equipped with indicating instruments, which conform with the specifications set forth in the Standards of Good Engineering Practice Concerning FM Broadcast Stations for measuring the direct plate voltage and current of the last radio stage and the transmission line radio frequency current, voltage, or power. (See Indicating Instruments Pursuant to § 3.258 in the Standards of Good Engineering Practice Concerning FM Broadcast Stations.)

(b) In the event that any one of these indicating instruments becomes defective when no substitute which conforms with the required specifications is available, the station may be operated without the defective instrument pending its repair or replacement for a period not in excess of 60 days: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station showing the date and time the meter was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the instrument is found to be defective and immediately after the repaired or replaced instrument has been installed and functioning properly.

(3) If the defective instrument is a plate voltmeter or plate ammeter in the last radio stage, the operating power shall be maintained by means of the radio frequency transmission line meter.

(c) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

13. Delete § 3.652 and substitute the following:

§ 3.652 *Frequency monitors.* (a) Each television broadcast station shall have in operation at the transmitter visual and aural frequency monitors independent of the frequency control of the transmitters.

(b) In the event that the visual or aural frequency monitor becomes defec-

tive the station may be operated without the monitor pending its repair or replacement for a period not in excess of 60 days without further authority of the Commission: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station to show the date and time the monitor was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the monitor is found to be defective and immediately after the repaired or replacement monitor has been installed and is functioning properly.

(3) During the period when the station is operated without the visual or aural frequency monitor the licensee shall provide suitable means for insuring that the operating frequency is maintained within the tolerance prescribed in § 3.668.

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor to service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located; for such additional time as may be required to complete repairs of the defective instrument.

14. Delete § 3.653 and substitute the following:

§ 3.653 *Modulation monitors.* (a) Each television broadcast station shall have in operation at the transmitter a modulation monitor for the aural transmitter. There shall also be sufficient monitoring equipment for the visual signal to determine that the signal complies with the Standards of Good Engineering Practice Concerning Television Broadcast Stations.

(b) In the event that the modulation monitor for the aural transmitter or the monitoring equipment for the visual signal become defective the station may be operated without the defective monitor or monitoring equipment pending repair or replacement for a period not in excess of 60 days: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station to show the date and time the aural modulation monitor or visual monitoring equipment was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the aural modulation monitor or visual monitoring equipment is found to be defective and immediately after the repaired or replacement monitor or monitoring equipment has been installed.

(3) During the period when the station is operated without the aural modulation monitor or visual monitoring equipment, the licensee shall provide suitable means for insuring that the aural modulation is maintained within the tolerance prescribed in § 3.667 and that the visual signal is maintained in accordance with the Standards of Good Engineering Practice Concerning Television Broadcast Stations.

(c) If conditions beyond the control of the licensee prevent the restoration of the monitor or monitoring equipment to

service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument or equipment.

15. Amend § 3.657 as follows: Delete paragraph (c) and redesignate paragraph (d) as paragraph (c).

16. Add new § 3.658 as follows:

§ 3.658 *Indicating instruments.* (a) Each television broadcast station shall be equipped with indicating instruments which conform with the specifications set forth in the Standards of Good Engineering Practice Concerning TV Broadcast Stations for measuring the direct plate voltage and current of the last radio stage of the visual and aural transmitters and the transmission line radio frequency current, voltage or power of both transmitters. (See Indicating Instruments Pursuant to § 3.658 in the Standards of Good Engineering Practice Concerning Television Broadcast Stations.)

(b) In the event that any one of these indicating instruments becomes defective when no substitute which conforms with the required specifications is available, the station may be operated without the defective instrument pending its repair or replacement for a period not in excess of 60 days: *Provided, That:*

(1) Appropriate entries shall be made in the operating log of the station showing the date and time the meter was removed from and restored to service.

(2) The Engineer in charge of the radio district in which the station is located shall be notified both immediately after the instrument is found to be defective and immediately after the repaired or replacement instrument has been installed and is functioning properly.

(3) If the defective instrument is a plate voltmeter or plate ammeter in the last radio stage, the operating power shall be maintained by means of the radio frequency transmission line meter.

(c) If conditions beyond the control of the licensee prevent the restoration of the meter to service within the above allowed period, informal request may be filed with the Engineer in charge of the radio district in which the station is located for such additional time as may be required to complete repairs of the defective instrument.

17. Amend section 13 of the Standards of Good Engineering Practice Concerning Standard Broadcast Stations as follows: Delete first two unnumbered paragraphs of section 13 and substitute therefor the following:

The following requirements and specifications shall apply to indicating instruments used by standard broadcast stations:

No change in paragraph A.

No change in paragraph B.

No change in paragraph C.

Delete paragraph D.

Redesignate paragraph E as paragraph

D.

Redesignate paragraph F as paragraph

E.

Redesignate paragraph G as paragraph F.
Redesignate paragraph H as paragraph G.

18. Amend section 9 of the Standards of Good Engineering Practice Concerning FM Broadcast Stations as follows:
Change title to read: "Sec. 9. Indicating instruments pursuant to § 3.258."

Delete first unnumbered paragraph of section 9.

No change in second unnumbered paragraph.

No change in paragraph A.

No change in paragraph B.

No change in paragraph C.

Delete paragraph D.

Redesignate paragraph E as paragraph D.

Redesignate paragraph F as paragraph E.

Redesignate paragraph G as paragraph F.

19. Amend section 10 of the Standards of Good Engineering Practice Concerning Television Broadcast Stations as follows: Delete section 10 of the Standards Concerning Television Broadcast Stations and substitute the following:

SEC. 10. Indicating instruments pursuant to § 3.658. A. The following requirements and specifications shall apply to indicating instruments used by television broadcast stations.

(1) Length of scale shall be not less than $2\frac{3}{10}$ inches.

(2) Accuracy shall be at least 2 percent of the full scale reading.

(3) Scale shall have at least 40 divisions.

(4) Full scale reading shall be not greater than five times the minimum normal indication.

No specifications are prescribed at this time regarding the peak indicating device required by section 11B (1) of these standards.

B. No required instrument the accuracy of which is questionable shall be employed. Repairs and calibration of instruments shall be made by the manufacturer, or by an authorized instrument repair service of the manufacturer, or by some other properly qualified or equipped instrument repair service. In any case, the repaired instrument must be supplied with a certificate of calibration.

C. Recording instruments may be employed in addition to the indicating instruments to record the direct plate current and/or voltage to the last radio stage provided that they do not affect the operation of the circuits or accuracy of the indicating instruments. If the records are to be used in any proceeding before the Commission, as representative of operation, the accuracy must be the equivalent of the indicating instruments and the calibration shall be checked at such intervals as to insure the retention of such accuracy.

D. The function of each instrument used in the equipment shall be clearly and permanently shown on the instrument itself or on the panel immediately adjacent thereto.

20. Amend § 1.332 of the rules as follows:

A. Delete § 1.332 (b) (8) and substitute the following:

(8) Temporary operation without specified items of equipment or with auxiliary equipment:

(i) Operation without thermometer in automatic temperature control chamber.

(ii) Operation with temporary antenna system.

(iii) Operation with auxiliary transmitter as main transmitter.

B. Add new § 1.332 (d) as follows:

(d) Requests from broadcast stations for extension of authority to operate without any of the following should be made by informal application to the Engineer in charge of the radio district in which the station is located.

(i) Frequency monitor.

(ii) Modulation monitor.

(iii) Plate ammeter or voltmeter.

(iv) Base current meter or common point meter.

(v) Transmission line meter for FM and Television stations.

[F. R. Doc. 51-13697; Filed, Nov. 14, 1951; 8:52 a. m.]

[47 CFR Parts 2, 3]

[Docket Nos. 8736, 8975, 8976, 9175]

TELEVISION BROADCAST SERVICE

NOTICE OF PROPOSED RULE MAKING

In the matters of amendment of § 3.606 of the Commission's rules and regulations, Docket Nos. 8736 and 8975; Amendment of the Commission's rules, regulations and Engineering Standards Concerning the Television Broadcast Service, Docket No. 9175; Utilization of frequencies in the Band 470 to 890 Mcs. for Television Broadcasting, Docket No. 8976.

On October 26, 1951, the Department of State announced that an Agreement, a copy of which is attached as Appendix A, has been concluded by the exchange of diplomatic notes between the governments of the United States of America and Mexico for the assignment of television frequency channels to cities within 250 miles of the United States-Mexican border. This Agreement is the culmination of negotiations between representatives of the two governments extending over the period from April, 1949 to June, 1951. The Agreement relates to the assignment of the 12 television channels between 50-216 megacycles for the area within 250 miles of each side of the border and for certain of the operating conditions for stations in this area.

The terms of the Agreement differ in some respects from the terms of the third notice of further proposed rule making, issued in the television proceedings on March 22, 1951. The Commission, therefore, will accept new comments and evidence from parties who have heretofore filed comments in the current proceedings relating to proposals which have not heretofore been made to the Commission if such new proposals are made solely as a result of the final changes brought about by the

Agreement with Mexico and are consistent with the terms of that Agreement. Parties will have until November 21, 1951, to file such comments and evidence. Persons desiring to file comments in opposition or evidence in opposition to such comments and evidence may do so on or before December 5, 1951. Briefs and other pleadings, as contemplated by paragraphs 5 (e) and (f) of the "Order of Hearing Procedure" issued on July 25, 1951 in the television proceedings, must be filed on or before December 17, 1951.

Adopted: November 7, 1951.

Released: November 8, 1951.

FEDERAL COMMUNICATIONS
COMMISSION,

[SE L] T. J. SLOWIE,
Secretary.

APPENDIX A

MEXICO, D. F., August 10, 1951.

[His Excellency MANUEL TELLO,
Minister for Foreign Relations,
Mexico, D. F.]

EXCELLENCY:

I have the honor to refer to the informal conversations recently held in Mexico City between representatives of our respective Governments on the subject of the allocation of television channels along the border which joins the United States of Mexico and the United States of America.

I have been instructed by my Government to propose an agreement in the following terms:

A. *Scope of agreement.* This agreement relates to the assignment and use of twelve (12) television channels between 50 and 216 megacycles along the border of the United States of Mexico and the United States of America, within an area of 400 kilometers (250 miles) in width on either side of this border.

B. *Power of stations.* 1. All station assignments considered in this arrangement shall have an effective radiated power not in excess of:

(a) 100 kw for channels 2, 3, 4, 5, 6.

(b) 200 kw for channels 7, 8, 9, 10, 11, 12, 13.

2. Lower power than that listed in (1) above may be assigned by either Government, but

3. The assignment of lower power shall not prevent the assignment of the maximum proposed power at a later date.

C. *Offset of video carrier frequency.* 1. In order to obtain the most favorable possible desired to undesired signal ratio and the maximum service areas in any group of three stations located in close proximity to each other and operating on the same channel, the video carrier frequency of two of said stations shall be offset by plus or minus 10 kilocycles respectively. The normal video carrier frequency shall be assigned to the station located nearest to the border and the offset of plus or minus 10 kc to the two distant stations within the area of 400 kilometers. The carrier frequency assignments shown in Tables A and B are accepted.

2. The frequency tolerance of stations in this arrangement shall be maintained within plus or minus 1 kilocycle of the agreed frequency.

D. *Assignment plan.* 1. The station assignments shown in Tables A and B are accepted.

E. *Notification of station assignments.* 1. The Governments shall notify each other within 30 days of the grant of an authorization for a television station within the scope of this arrangement.

2. The notification shall contain the following:

- a. Transmitter location (city, longitude and latitude).
b. Channel number.
c. Video carrier frequency.
d. Antenna height.
e. Effective radiated power.
f. Call letters.

F. Cooperation and exchange of information. 1. The administrations of the respective countries will exchange information and cooperate with each other for the purpose of minimizing interference and obtaining maximum efficiency in the use of television channels.

TABLE A—MEXICO

Baja California:	
Tijuana	*6, *12
Mexicali	*3
Sonora:	
Nogales	2+, 7-, *11
Hermosillo	6-, 8-, *10, 12+
Ciudad Obregon	*3, 7+, 9+
Navojua	*5, 11-, 13+
Chihuahua:	
Chihuahua	2-, 4+, 5+
Hidalgo del Parral	3+
Ciudad Juarez	*2, *5, 11+
Coahuila:	
Saltillo	4-
Piedras Negras	*2
Villa Acuna	*10
Nuevo Leon:	
Monterrey	2+, *6, 10+
Tamaulipas:	
Nuevo Laredo	*3, *11
Matamoros	*7
Reynosa	*9, *12

OFFSET CARRIER DESIGNATORS

- * Zero offset frequency.
+ Plus 10 kc.
- Minus 10 kc.

TABLE B—UNITED STATES

Arizona:	
Douglas	3-
Flagstaff	*9, *13
Kingman	6-
Mesa	12-
Phoenix	3+, 5-, 8+, 10-
Tucson	4-, 6+, 9-, 13-
Yuma	11-, 13+
California:	
Bakersfield	10-
Los Angeles	*2, *4, *5, *7, *9, *11, *13
San Diego	*8, *10
Nevada:	
Boulder City	4+
Henderson	2-
Las Vegas	8-, 10+, 13-
New Mexico:	
Albuquerque	4+, 5+, 7+, 13+
Carlsbad	6-
Clovis	12+
Roswell	3+, *8, 10-
Silver City	*12
Texas:	
Alpine	12-
Austin	7+
Big Spring	4-
Brownsville	4+, 5-
Corpus Christi	6-, 10-
El Paso	*4, *7, *9, *13
Laredo	*8, *13
Midland	2+
Monahans	5-
Odessa	7-
San Angelo	*6, 8+
San Antonio	*4, *5, 9-, 12+
Sweetwater	*12

OFFSET CARRIER DESIGNATORS

- * Zero offset frequency.
+ Plus 10 kc.
- Minus 10 kc.

This note shall supersede the note dated November 28, 1950, delivered by the Department of State of the United States of America to the Embassy of the United States of Mexico at Washington, concerning the assignment and use of the television channels referred to herein.

I have the honor to inform Your Excellency that the Government of the United States of America will consider this note, together with your note in reply concurring with the above, as constituting an agreement between the two governments with respect to this matter, such agreement to be effective as of the date of your note in reply.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

WILLIAM O'DWYER.

MEXICO D. F., September 26, 1951.

MR. AMBASSADOR:

I have the honor to refer to Your Excellency's note No. 212 dated August 10, 1951, in which on instructions of your government you propose the conclusion of an agreement on the allocation of television channels along the border between Mexico and the United States of America in conformity with the informal conversations which were recently held in Mexico City between the representatives of the two governments.

The government of the United Mexican States agrees to the conclusion of the said agreement according to the terms set forth in Your Excellency's note No. 212 which translated into Spanish are as follows:

[Same as text of note from United States to Mexico, paragraphs A through F and Tables A and B.]

It is understood that the note to which this one replies supersedes the note dated November 28, 1950, which the Department of State of the United States delivered to the Embassy of Mexico at Washington, D. C., in connection with this matter.

In accordance with the last paragraph of Your Excellency's note No. 212 the government of the United Mexican States will consider that the said note and this note constitute an agreement between our two governments on the allocation of television channels along the border between the United States and Mexico and that it will enter into force on this date.

Accept Mr. Ambassador the assurances of my highest consideration.

MANUEL TELLO.

His Excellency WILLIAM O'DWYER,
Ambassador Extraordinary and Plenipotentiary of the United States of America, City.

[F. R. Doc. 51-13698; Filed, Nov. 14, 1951;
8:52 a. m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 182]

UNIFORM SYSTEM OF ACCOUNTS FOR CLASS I COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

NOTICE OF PROPOSED RULE MAKING

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 7th day of November A. D. 1951.

The "Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property, Issue of 1948", being under consideration pursuant to provisions of the Interstate Commerce Act, as amended, and the modifications which are set forth below and made a part hereof being deemed necessary for proper administration of the provisions of Part II of the act (49 Stat. 546, 49 U. S. C. 204 and 220): *It is ordered*, That:

(1) Any interested party may on or before December 10, 1951, file with the

Commission a written statement of reasons why the said modifications should not become effective as hereinafter ordered and may request oral argument if desired.

(2) Unless otherwise ordered after consideration of objections so filed, the said modifications shall become effective January 1, 1952.

(3) A copy of this order including the attached modifications shall be served on every Class I motor carrier of property subject to the Act and on every trustee, receiver, executor, administrator, or assignee of any such motor carrier, and notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

By the Commission, Division 1.

[SEAL]

W. P. BARTEL,
Secretary.

SPECIAL NOTE: Changes hereinafter in the title or number of an account shall be understood to require corresponding changes elsewhere in this system of accounts where present reference appears to the old title or number.

1. In § 182.01-25 *Joint facilities*, without altering the title of the instruction, cancel the text and substitute the following for it:

(a) Where a joint facility (see § 182.00-1 (w) (definition 23)), operated by others, is used by the reporting carrier under a joint facility arrangement, any amounts paid by the carrier as its share of operation and maintenance costs including rent if the property is leased, or including depreciation, taxes and a return on the investment in the joint facility if the property is owned by the operating carrier, shall be charged to the appropriate joint facility-debit account under equipment maintenance, terminal or administration and general expenses.

(b) Where the reporting carrier operates a joint facility, any amounts received from other carriers using the facility as reimbursement of operation and maintenance costs, including rent if the property is leased, or including depreciation, taxes and a return on the investment in the joint facility if the property is owned by the reporting carrier, shall be credited to the appropriate joint facility-credit account under equipment maintenance, terminal, or administrative and general expenses.

(c) The carrier operating the joint facility shall include a statement of the distribution of the income and expenses of the facility on bills rendered joint users.

2. After § 182.1160 *Interest and dividends receivable*, insert the following account:

§ 182.1170 *Prepayments*. (a) This account shall include the amount of expenses paid or incurred in advance of their accrual, the benefits of which are to be realized in subsequent periods. Entries shall be made each month, transferring to the appropriate expense or other account the portion of each prepayment which is applicable to that month.

(b) This account shall be subdivided as follows:

- 1171—Prepaid Taxes and Licenses.
- 1172—Prepaid Insurance.
- 1173—Prepaid Interest.
- 1174—Prepaid Rents.
- 1175—Prepaid Stationery and Printed Matter.
- 1176—Prepaid Tires and Tubes.
- 1179—Miscellaneous Prepayments.

NOTE A: The cost of tires and tubes for revenue equipment, including taxes, may, at the time of original application to vehicles, be charged either to this account or direct to account 4160—Tires and Tubes—Revenue Equipment, or other appropriate expense account. The value of tires and tubes furnished by the vendor with newly acquired revenue equipment may also be charged to this account. A prorated portion of the cost of tires and tubes charged to this account, based on mileage or other equitable method of apportionment, shall be transferred each month to the appropriate expense account.

NOTE B: The undistributed service value, included in this account, of tires and tubes that are sold or traded in with vehicles, or which are destroyed or otherwise disposed of, shall be credited to this account.

NOTE C: Prepayments of minor items may be charged directly to the appropriate expense or other account.

3. In § 182.1800 *Prepayments*, cancel the title, text and notes of this account.

4. After § 182.4180 *Other maintenance expenses*, insert the following account:

§ 182.4185 *Operating rents*. (a) This account shall include rental payments for real estate and other property used in motor carrier operations by the Equipment Maintenance Department, not provided for elsewhere.

(b) This account shall be credited with amounts receivable as rents for the use of real estate and other property of the Equipment Maintenance Department, not provided for elsewhere.

(c) This account shall also include amounts receivable as rental from the sublease of property rented from others if amounts payable as rent for the property by the reporting carrier are charged hereto.

NOTE A: Amounts payable or receivable for rental of real estate and other property included in the lease of a distinct operating unit (see § 182.00-1 (v) (definition 22)) shall be included in account 5400—Lease of Distinct Operating Unit—Debit, or account 5500—Lease of Distinct Operating Unit—Credit, as appropriate.

NOTE B: Rentals for property and equipment used in noncarrier operations shall be included in account 6100—Income from Noncarrier Operations—Net.

5. In § 182.4191 *Joint garage expense; debit*, cancel the text of the account and substitute the following for it:

§ 182.4191 *Joint garage expense; debit*. This account shall include the carrier's proportion of costs incurred by others in maintaining and operating joint shop and garage equipment and facilities. (See §§ 182.00-1 (w) (definition 23) and 182.01-25 (a) (instruction 25 (a))).

6. In § 182.4196 *Joint garage expense; credit*, cancel the text of the account and substitute the following for it:

§ 182.4196 *Joint garage expense; credit*. This account shall include the amounts chargeable to others as their

proportion of the costs incurred by the reporting carrier in maintaining and operating joint shop and garage equipment and facilities. (See §§ 182.00-1 (w) (definition 23) and 182.01-25 (b) (instruction 25 (b))).

7. In § 182.4270 *Purchased transportation*, without altering the title of the account cancel the text and notes, and the titles, texts and notes of the accounts subsidiary thereto numbered 4271 and 4275, and substitute the following:

This account shall be subdivided as follows:

§ 182.4271 *Equipment rents; intercity; with drivers*. This account shall include amounts payable to others for furnishing revenue vehicles with the services of drivers for the exclusive use and under the control of the reporting carrier in intercity service where the payment includes the wages of drivers.

NOTE: If the arrangement under which vehicles with drivers are furnished to the carrier provides that wages of the drivers shall be paid separately by the reporting carrier and included on its payroll, the wages shall be included in account 4230—Drivers and Helpers, and the balance of the amount payable for the service shall be included in account 4272—Equipment Rents—Intercity—Without Drivers.

§ 182.4272 *Equipment rents; intercity; without drivers*. This account shall include amounts payable to others for furnishing revenue vehicles to the reporting carrier for its exclusive use, and under its control, in intercity service, where the payment does not include drivers' wages.

NOTE A: If, under the arrangement for use of a vehicle, the services of a driver are also included and his wages are to be paid separately by the reporting carrier and included on its payroll, the amounts of wages so paid shall be included in account 4230—Drivers and Helpers.

NOTE B: Amounts payable for rental of revenue equipment included in the lease of a distinct operating unit (see § 182.00-1 (v) (definition 22)), shall be charged to account 5400—Lease of Distinct Operating Unit—Debit.

§ 182.4273 *Other purchased transportation; intercity*. (a) This account shall include payments for the intercity transportation of individual shipments and part-loads, billed by the reporting carrier, in the vehicles of another motor carrier when the hauling carrier retains control of the vehicle and driver.

(b) This account shall also include payments to railroads, water carriers and other motor carriers for the intercity transportation of the reporting carrier's loaded and empty revenue vehicles.

(c) Amounts included in this account shall be segregated as follows:

- (1) Payments to motor carriers.
- (2) Payments to railroads and water carriers.

§ 182.4275 *Equipment rents; pickup and delivery; with drivers*. This account shall include amounts payable to others for furnishing revenue vehicles with the services of drivers for the exclusive use and under the control of the reporting carrier in pickup and delivery service and other local operations, where the payment includes the wages of the drivers.

NOTE: If the arrangement under which vehicles with drivers are furnished to the carrier provides that wages of the drivers shall be paid separately by the carrier and included on its payroll, the wages shall be included in account 4230—Drivers and Helpers, and the balance of the amount payable for the service in account 4276—Equipment Rents—Pickup and Delivery—Without Drivers.

§ 182.4276 *Equipment rents; pickup and delivery; without drivers*. This account shall include amounts payable to others for furnishing revenue vehicles to the reporting carrier for its exclusive use, and under its control, in pickup and delivery and other local operations, when the payment does not include drivers' wages.

NOTE A: If the arrangement for use of a vehicle covers the services of a driver whose wages are to be paid separately by the reporting carrier and included on its payroll, the amounts of wages so paid shall be included in account 4230—Drivers and Helpers.

NOTE B: Amounts payable for rental of revenue equipment included in the lease of a distinct operating unit (see § 182.00-1 (v) (definition 22)) shall be charged to account 5400—Lease of Distinct Operating Unit—Debit.

§ 182.4277 *Other purchased pickup and delivery*. (a) This account shall include payments to others for picking up and delivering the reporting carrier's intercity freight and performing its local cartage service, when the vehicles so employed are not used exclusively in the carrier's service and are not under its control.

(b) This account shall also include allowances to shippers and consignees for picking up and delivering intercity shipments.

(c) Amounts included in this account shall be segregated as follows:

- (1) Payments to motor carriers and others.
- (2) Allowances to shippers.

NOTE: This account shall not be charged with payments to another motor carrier for pickup or delivery service where the compensation for such service is based on a division of the through tariff rate.

§ 182.4279 *Equipment rents; credit*. (a) This account shall be credited with rents receivable by the reporting carrier for owned or leased revenue vehicles which are furnished to others without the services of drivers.

(b) This account shall also be credited with rents receivable for owned or leased revenue vehicles furnished to other motor carriers under an arrangement whereby both the vehicle and driver are furnished by the reporting carrier but the wages of the driver are paid separately by the hiring carrier and included on its payroll.

(c) This account shall be subdivided to reflect separately:

- (1) Rents receivable for intercity revenue vehicles.
- (2) Rents receivable for pickup and delivery revenue vehicles.

NOTE A: Payments receivable from other motor carriers which cover both the rent of an intercity vehicle and wages of the driver shall be credited to account 3130 if the service is furnished to a Class I motor carrier, and to account 3100 or account 3110 if furnished to motor carriers other than Class I.

NOTE B: Payments receivable from other motor carriers which cover both the rent of a pickup and delivery vehicle and wages of the driver shall be credited to account 3120.

NOTE C: Amounts receivable for rental of revenue vehicles included in the lease to others of a distinct operating unit (see § 182.00-1 (v) (definition 22)), shall be credited to account 5500—Lease of Distinct Operating Unit—Credit.

8. After § 182.4280 *Other transportation expenses*, insert the following account:

§ 182.4285 *Operating rents*. (a) This account shall include rental payments for real estate and other property, except revenue equipment, used in motor carrier operations by the Transportation Department not provided for elsewhere.

(b) This account shall be credited with amounts receivable as rents for the use of real estate and other property, except revenue equipment, of the Transportation Department not provided for elsewhere.

(c) This account shall also include amounts receivable as rental from the sublease of property rented from others if amounts payable as rent for the property by the reporting carrier are charged hereto.

NOTE A: Amounts payable or receivable for rental of real estate and other property included in the lease of a distinct operating unit (see § 182.00-1 (b) (definition 22)) shall be included in account 5400—Lease of Distinct Operating Unit—Debit, or account 5500—Lease of Distinct Operating Unit—Credit, as appropriate.

NOTE B: Rentals for property and equipment used in noncarrier operations shall be included in account 6100—Income from Noncarrier Operations—Net.

NOTE C: Rentals for the use of revenue equipment shall be included in account 4270—Purchased Transportation.

9. After § 182.4380 *Other terminal expenses*, insert the following account:

§ 182.4385 *Operating rents*. (a) This account shall include rental payments for real estate and other property, used in motor carrier operations by the Terminal Department, not provided for elsewhere.

(b) This account shall be credited with amounts receivable as rents for the use of real estate and other property of the Terminal Department, not provided for elsewhere.

(c) This account shall also include amounts receivable as rental from the sublease of property rented from others if amounts payable as rent for the property by the reporting carrier are charged hereto.

NOTE A: Amounts payable or receivable for rental of real estate and other property included in the lease of a distinct operating unit (see definition 22) shall be included in account 5400—Lease of Distinct Operating Unit—Debit, or account 5500—Lease of Distinct Operating Unit—Credit, as appropriate.

NOTE B: Rentals for property and equipment used in noncarrier operations shall be included in account 6100—Income from Noncarrier Operations—Net.

10. In § 182.4391 *Joint terminal facilities; debit*, cancel the text of the account and substitute the following for it:

§ 182.4391 *Joint terminal facilities; debit*. This account shall include the carrier's proportion of costs incurred by others in maintaining and operating joint terminal equipment and facilities. (See § 182.00-1 (w) (definition 23) and § 182.01-25 (a) (instruction 25 (a)).)

11. In § 182.4396 *Joint terminal facilities; credit*, cancel the text of the account and substitute the following for it:

§ 182.4396 *Joint terminal facilities; credit*. This account shall include the amounts chargeable to others as their proportions of the costs incurred by the reporting carrier in maintaining and operating joint terminal equipment and facilities. (See § 182.00-1 (w) (definition 23) and § 182.01-25 (b) (instruction 25 (b)).)

12. After § 182.4480 *Other traffic expenses*, insert the following account:

§ 182.4485 *Operating rents*. (a) This account shall include rental payments for real estate and other property used in motor carrier operations by the Traffic Department, not provided for elsewhere.

(b) This account shall be credited with amounts receivable as rents for the use of real estate and other property of the Traffic Department, not provided for elsewhere.

(c) This account shall also include amounts receivable as rental from the sublease of property rented from others if amounts payable as rent for the property by the reporting carrier are charged hereto.

NOTE A: Amounts payable or receivable for rental of real estate and other property included in the lease of a distinct operating unit (see § 182.00-1 (v) (definition 22)) shall be included in account 5400—Lease of Distinct Operating Unit—Debit, or account 5500—Lease of Distinct Operating Unit—Credit, as appropriate.

NOTE B: Rentals for property and equipment used in noncarrier operations shall be included in account 6100—Income from Noncarrier Operations—Net.

13. After § 182.4580 *Other insurance and safety expenses*, insert the following account:

§ 182.4585 *Operating rents*. (a) This account shall include rental payments for real estate and other property, used in motor carrier operations by the Insurance and Safety Department, not provided for elsewhere.

(b) This account shall be credited with amounts receivable as rents for the use of real estate and other property of the Insurance and Safety Department, not provided for elsewhere.

(c) This account shall also include amounts receivable as rental from the sublease of property rented from others if amounts payable as rent for the property by the reporting carrier are charged hereto.

NOTE A: Amounts payable or receivable for rental of real estate and other property included in the lease of a distinct operating unit (see § 182.00-1 (v) (definition 22)) shall be included in account 5400—Lease of

Distinct Operating Unit—Debit, or account 5500—Lease of Distinct Operating Unit—Credit, as appropriate.

NOTE B: Rentals for property and equipment used in noncarrier operations shall be included in account 6100—Income from Noncarrier Operations—Net.

14. After § 182.4680 *Other general expenses*, insert the following account:

§ 182.4685 *Operating rents*. (a) This account shall include rental payments for real estate and other property, used in motor carrier operations by the Administrative and General Department, not provided for elsewhere.

(b) This account shall be credited with amounts receivable as rents for the use of real estate and other property of the Administrative and General Department, not provided for elsewhere.

(c) This account shall also include amounts receivable as rental from the sublease of property rented from others if amounts payable as rent for the property by the reporting carrier are charged hereto.

NOTE A: Amounts payable or receivable for rental of real estate and other property included in the lease of a distinct operating unit (see § 182.00-1 (v) (definition 22)) shall be included in account 5400—Lease of Distinct Operating Unit—Debit, or account 5500—Lease of Distinct Operating Unit—Credit, as appropriate.

NOTE B: Rentals for property and equipment used in noncarrier operations shall be included in account 6100—Income from Noncarrier Operations—Net.

15. In § 182.4691 *Joint operating expense; debit*, cancel the text of the account and substitute the following for it:

§ 182.4691 *Joint operating expense; debit*. This account shall include the carrier's proportion of costs incurred by others in maintaining and operating joint facilities for general purposes, such as a general office, or when amounts payable cannot be segregated between the functional groups of expense accounts provided in this system of accounts. (See § 182.00-1 (w) (definition 23) and § 182.01-25 (a) (instruction 25 (a)).)

16. In § 182.4696 *Joint operating expense; credit*, cancel the text of the account and substitute the following for it:

§ 182.4696 *Joint operating expense; credit*. This account shall include the amounts chargeable to others as their proportions of the costs incurred by the reporting carrier in maintaining and operating joint facilities used for general purposes, such as a general office, or when the amounts receivable cannot be segregated between the functional groups of expense accounts provided in this system of accounts. (See § 182.00-1 (w) (definition 23) and § 182.01-25 (a) (instruction 25 (b)).)

17. In § 182.5300 *Operating rents; net*, cancel the title of this account and the titles, texts and notes of the accounts subsidiary thereto numbered 5310 to 5390 (§§ 182.5310 to 182.5390), inclusive.

[F. R. Doc. 51-13703; Filed, Nov. 14, 1951; 8:54 a. m.]

NOTICES

DEPARTMENT OF THE TREASURY

Office of the Secretary

TWO AND ONE-HALF PERCENT TREASURY BONDS OF 1952-54

NOTICE OF CALL FOR REDEMPTION

1. Public notice is hereby given that all outstanding 2½ percent Treasury Bonds of 1952-54, dated March 31, 1941, due March 15, 1954, are hereby called for redemption on March 15, 1952, on which date interest on such bonds will cease.

2. Holders of these bonds may, in advance of the redemption date, be offered the privilege of exchanging all or any part of their called bonds for other interest-bearing obligations of the United States, in which event public notice will hereafter be given and an official circular governing the exchange offering will be issued.

3. Full information regarding the presentation and surrender of the bonds for cash redemption under this call will be found in Department Circular No. 666, dated July 21, 1941.

[SEAL] JOHN W. SNYDER,
Secretary of the Treasury.

NOVEMBER 14, 1951.

[F. R. Doc. 51-13704; Filed, Nov. 14, 1951;
8:54 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

UTAH

AIR-NAVIGATION SITE WITHDRAWAL NO. 1
REDUCED

NOVEMBER 6, 1951.

In accordance with the authority contained in section 4 of the act of May 24, 1928 (45 Stat. 728; 49 U. S. C. 214), and pursuant to § 2.22a of the Delegation Order No. 427 of August 16, 1950 (15 F. R. 5641), it is ordered as follows:

Departmental Order of July 3, 1928, withdrawing certain lands in Utah for use by the Department of Commerce in the maintenance of air-navigation facilities is hereby revoked so far as it affects the following-described land:

UTAH

SALT LAKE MERIDIAN

T. 5 S., R. 4 W.

Sec. 19: SE¼SW¼, containing 40 acres, and the land is hereby opened to disposition under the applicable public-land laws, subject to valid existing rights.

The above-described land is rough and arid desert land within Utah Grazing District No. 2. It has no agricultural value. It is primarily valuable for grazing of livestock. It will not be subject to occupancy or disposition until it has been classified. It is unlikely that it will be classified as suitable for homestead, desert-land, or small tract lease.

This order shall become effective immediately as to administration of graz-

ing on these lands by the Bureau of Land Management, but shall not otherwise become effective until 10:00 a. m. on the 35th day after the date hereof. At that time the said land shall become subject to application, petition, location, and selection, subject to valid existing rights, the provisions of existing withdrawals, the requirements of the applicable law, and the 90-day preference right filing period for veterans and others entitled to preference under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284), as amended.

Information showing the periods during which, and the conditions under which veterans and others may file applications for this land may be obtained on request from the manager, BLM land and survey office, Salt Lake City, Utah.

H. BYRON MOCK,
Regional Administrator.

[F. R. Doc. 51-13692; Filed, Nov. 14, 1951;
8:51 a. m.]

UTAH

AIR-NAVIGATION SITE WITHDRAWAL NO.
UTAH R-IV-1

NOVEMBER 6, 1951.

By virtue of the authority contained in section 4 of the act of May 24, 1928, 45 Stat. 729 (49 U. S. C. 214), and in section 7 of the act of June 28, 1934, 48 Stat. 1272, as amended by the act of June 26, 1936, 49 Stat. 1976 (43 U. S. C. 315f), and pursuant to § 2.22 (a) (2) of Delegation Order No. 427 of August 16, 1950 (15 F. R. 5639), it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Utah are hereby withdrawn from all forms of appropriation under the public-land laws and reserved for the use of the Civil Aeronautics Administration, Department of Commerce, in the maintenance of air-navigation facilities, the reservation to be known as Air-Navigation Site Withdrawal No. Utah R-IV-1.

UTAH

SALT LAKE MERIDIAN

T. 43 S., R. 14 W.,
Sec. 6: Lot 2.

The area described aggregates 49.42 acres.

This order shall take precedence over, but not otherwise affect, the order of the Secretary of the Interior, dated April 8, 1935, establishing Utah Grazing District No. 4, so far as it affects the above-described lands.

It is intended that the above-described lands shall be returned to the administration of the Department of the Interior when they are no longer needed for the purpose for which they are reserved.

H. BYRON MOCK,
Regional Administrator.

[F. R. Doc. 51-13693; Filed, Nov. 14, 1951;
8:51 a. m.]

UTAH

AIR-NAVIGATION SITE WITHDRAWAL NO. 206
REVOKED

NOVEMBER 6, 1951.

In accordance with the authority contained in section 4 of the act of May 24, 1928, 45 Stat. 728 (49 U. S. C. 214), and pursuant to § 2.22 (a) of the Delegation Order No. 427 of August 16, 1950 (15 F. R. 5641), it is ordered as follows:

Departmental Order of July 14, 1943 withdrawing certain lands in Utah for use by the Department of Commerce in the maintenance of air-navigation facilities is hereby revoked so far as it affects the following-described lands:

UTAH

SALT LAKE MERIDIAN

T. 6 N., R. 11 W., unsurveyed. Beginning at a point in what probably will be unsurveyed section 8, about one-third mile southwest of Hogup Station, from which mile post number 721 in center line on main track of the Southern Pacific Railroad bears N. 10° 28' E., 200 feet, and N. 79° 32' W., 1,000 feet and running thence S. 10° 28' W., 50 feet; thence S. 79° 32' E., 50 feet; thence N. 10° 28' E., 50 feet; thence N. 79° 32' W., 50 feet, to the place of beginning, and containing 0.057 acre.

T. 6 N., R. 9 W.

Sec. 21: lot 7, exclusive of patented mining claim, containing 24.02 acres,

and the land is hereby opened to disposition under the applicable public-land laws, subject to valid existing rights.

The above-described lands are very arid desert lands. They have no agricultural value, and very little value for grazing. They will not be subject to occupancy or disposition until they have been classified. It is unlikely that either tract will be classified as suitable for homestead, desert-land, or small tract lease.

The lands are within grazing districts. This order, therefore, shall become effective immediately as to administration of grazing on these lands by the Bureau of Land Management, but shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date hereof. At that time the said lands shall become subject to application, petition, location, and selection, subject to valid existing rights, the provisions of existing withdrawals, the requirements of the applicable law, and the 90-day preference right filing period for veterans and others entitled to preference under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284), as amended.

Information showing the period during which, and the conditions under which veterans and others may file applications for this land may be obtained on request from the manager, BLM land and survey office, Salt Lake City, Utah.

H. BYRON MOCK,
Regional Administrator.

[F. R. Doc. 51-13694; Filed, Nov. 14, 1951;
8:51 a. m.]

[R-IV-17]

UTAH

RESTORATION ORDER NO. 1 (R-IV) UNDER
FEDERAL POWER ACT

NOVEMBER 6, 1951.

Pursuant to the determination of the Federal Power Commission (DA-76-Utah), and in accordance with Order No. 427, § 2.22 (a) (4) of the Director, Bureau of Land Management, approved August 16, 1950 (15 F. R. 5641), it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the lands hereinafter described, so far as they are withdrawn or reserved for power purposes, are hereby opened to disposition under the public-land laws as provided below, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U. S. C. 818), as amended, and subject to a reservation to the United States, its successors and assigns of the prior right to use any and all of the lands occupied by the pipe line right-of-way location, being a portion of a strip of land 100 feet in width as shown and more accurately described on a map made a part of the license for Project No. 1373, designated as "Exhibit K & L" and entitled "Detail Map of South Willow Creek Project of Utah Power and Light Company, Showing Location of Dam, Power House, Center Line of Pipe Line and General Design Drawings", and filed in the office of the Federal Power Commission on April 24, 1936; and provided that the right of the United States, its permittees or licensees to use the lands for power purposes shall be specifically reserved and provided further that no use be made of the lands by others which will in any way interfere or be inconsistent with the use of the lands by the United States, its permittees or licensees for power purposes:

UTAH

SALT LAKE MERIDIAN

T. 3 S., R. 6 W.

Sec. 33: N $\frac{1}{2}$ S $\frac{1}{2}$.Sec. 34: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

The character of the land is principally steep, rocky hillsides of a rugged mountain canyon, principally valuable for grazing and suitable for public sale.

These lands will not be subject to occupancy or disposition until they have been classified. It is unlikely that they

will be classified as suitable for homestead, desert-land, or small-tract use.

The lands described shall be subject to application by the State of Utah for a period of ninety days from the date of publication of this order in the FEDERAL REGISTER for right-of-way for public highways or as a source of material for the construction and maintenance of such highways, as provided by section 24 of the Federal Power Act, as amended.

This order shall not otherwise become effective to change the status of such land until 10:00 a. m. on the 91st day after the date of publication. At that time the above-described land in DA-76 shall become subject to application, petition, location, and selection, subject to valid existing withdrawals, the requirements of applicable laws, and the 90-day preference-right filing period for veterans and others entitled to preference under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284), as amended.

Information showing the periods during which and the conditions under which veterans and others may file applications for these lands may be obtained on request from the Land and Survey Office, 312 Federal Building, Salt Lake City, Utah.

H. BYRON MOCK,
Regional Administrator.

[F. R. Doc. 51-13695; Filed, Nov. 14, 1951;
8:52 a. m.]

[R-IV-18, 19, 20]

COLORADO

RESTORATION ORDER NO. 2 (R-IV) UNDER FED-
ERAL POWER ACT

NOVEMBER 6, 1951.

Pursuant to the following-listed determinations of the Federal Power Commission, and in accordance with Order No. 427, § 2.22 (a) (4) of the Director, Bureau of Land Management, approved August 16, 1950 (15 F. R. 5641), it is ordered as follows:

Subject to valid existing rights and the provisions of existing withdrawals, the lands hereinafter described, so far as they are withdrawn or reserved for power purposes, are hereby opened to disposition under the public-land laws as provided below, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U. S. C. 818), as amended:

Determination No.	Dates and types of withdrawal	Type of restoration	Description of lands
DA-272-Colorado...	Power site reserve No. 105 dated July 2, 1910.	Under the applicable public land laws.	Colorado: T. 7 S. R. 72 W., 6th P. M., sec. 28, SW $\frac{1}{4}$ SW $\frac{1}{4}$, containing 40 acres.
DA-285-Colorado...	Power site classification No. 92, dated Apr. 3, 1925.	do.....	Colorado: T. 7 S., R. 89 W., 6th P. M., sec. 1, lot 6, containing 6.32 acres.
DA-305-Colorado...	Power site reserve No. 244, dated Feb. 17, 1912.	do.....	Colorado: T. 3 S., R. 86 W., 6th P. M., sec. 35, N $\frac{1}{2}$ NW $\frac{1}{4}$, containing 80 acres.

The character of the above-described lands is as follows:

DA-272-Colorado: Inaccessible mountain land principally valuable for grazing, and suitable for sale or grazing lease.

DA-285-Colorado: Suitable for small-tract lease.

DA-305-Colorado: Suitable for the production of cultivated crops by irrigation.

No applications for these lands may be allowed under the homestead, desert-land, small tract, or any other non-mineral public-land laws, unless the lands have already been classified as valuable

or suitable for such type of application, or shall be so classified upon consideration of an application.

The lands described shall be subject to application by the State of Colorado for a period of ninety days from the date of publication of this order in the FEDERAL REGISTER for rights-of-way for public highways or as a source of material for the construction and maintenance of such highways, as provided by section 24 of the Federal Power Act, as amended.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 91st day after the date of publication of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, and selection as follows:

(a) Ninety-one day period for preference-right filings: For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279-284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 91st day after the date of publication shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 91st day shall be considered in the order of filing.

(b) Date for non-preference-right filings: Commencing at 10:00 a. m. on the 181st day after the date of publication, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 181st day after the date of publication, shall be treated as though filed simultaneously at the hour specified on such 181st day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of

service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Application for these lands, which shall be filed in the Land and Survey Office, Denver, Colorado, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the Manager, Land and Survey Office, Denver, Colorado.

H. BYRON MOCK,
Regional Administrator.

[F. R. Doc. 51-13696; Filed, Nov. 14, 1951;
8:52 a. m.]

Office of the Secretary

[Order No. 2508, Amdt. 2]

HEALTH, WELFARE, FUNDS AND FISCAL MATTERS

DELEGATION OF AUTHORITY WITH RESPECT TO BUREAU OF INDIAN AFFAIRS

1. The following is added to section 10:

SEC. 10. *Health and welfare matters.*

(h) The issuance of special deputy officers' commissions to Federal and state employees working under the supervision of the chief special officer for the suppression of traffic in liquor among Indians (62 Stat. 817; 18 U. S. C. 3055).

2. The following are added to section 11:

SEC. 11. *Funds and fiscal matters.*

(n) The approval of modifications and termination of trust agreements for relief and rehabilitation grants to tribes upon request of the tribes, and the transfer of any remaining assets of such grants to the tribes.

(o) The consent to assignments of loan agreements and interests therein by incorporated and unincorporated tribes and bands, credit associations, individuals, and cooperative associations indebted to the United States, and borrowers from incorporated and unincorporated tribes and bands and credit associations, pursuant to 25 CFR, Part 21.

(p) The taking of any of the steps authorized by 25 CFR 21.10.

(q) The amendment or revocation of charters of credit and other cooperative associations.

OSCAR L. CHAPMAN,
Secretary of the Interior.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13653; Filed, Nov. 14, 1951;
8:45 a. m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Defense Food Delegation 4, Amdt. 1]

ECONOMIC STABILIZATION ADMINISTRATOR

DELEGATION OF AUTHORITY WITH RESPECT TO MEAT

Pursuant to the authority vested in me by Executive Order 10161 (15 F. R. 6105), as amended, Defense Food Delegation No. 4 (16 F. R. 1272, 3311) is hereby amended to read as follows:

Pursuant to the provisions of section 902 (b) of Executive Order 10161 (15 F. R. 6105), as amended, the Economic Stabilization Administrator is hereby authorized to exercise the functions under section 101 of the Defense Production Act of 1950, as amended (64 Stat. 798, as amended; 50 U. S. C. App. Sup. 2061-2166), with respect to meat vested in the Secretary of Agriculture by section 101 (b) of Executive Order 10161, as amended. In exercising such authority, the Economic Stabilization Administrator is authorized to exercise the functions vested in the Secretary of Agriculture by sections 902 (a) and 902 (b) of Executive Order 10161, as amended.

Nothing contained herein shall be construed as limiting the authority of the Secretary of Agriculture to exercise any functions vested in him under Executive Order 10161, as amended.

Issued this 10th day of November 1951.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 51-13750; Filed, Nov. 14, 1951;
9:17 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

[No. M-45]

PRUDENTIAL STEAMSHIP CORP.

NOTICE OF POSTPONEMENT OF HEARING ON APPLICATION TO BAREBOAT CHARTER A GOVERNMENT-OWNED, WAR-BUILT, DRY-CARGO VESSEL FOR EMPLOYMENT IN SERVICE BETWEEN U. S. ATLANTIC PORTS AND PORTS IN THE MEDITERRANEAN

The informal public hearing scheduled to be held at Washington, D. C., on November 14, 1951, at 10 o'clock a. m., in Room 4823, Department of Commerce Building, before Examiner F. J. Horan, upon the application of Prudential Steamship Corporation to bareboat charter a Victory-type vessel for use in applicant's berth service between United States Atlantic ports (excluding ports south of Charleston) and ports in the Mediterranean (including Morocco, Al-

giers, France, Italy, Greece, Turkey, Lebanon, Syria, Israel, Egypt, Trieste, Spain, Yugoslavia, Tunisia and Libya), is postponed to November 21, 1951, at the same time and place.

Dated: November 9, 1951.

By order of the Federal Maritime Board.

[SEAL]

R. L. McDONALD,
Assistant Secretary.

[F. R. Doc. 51-13701; Filed, Nov. 14, 1951;
8:53 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

LEARNER EMPLOYMENT CERTIFICATES

ISSUANCE TO VARIOUS INDUSTRIES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1088, as amended; 29 U. S. C. and Sup. 214), and Part 522 issued thereunder (29 CFR, Part 522), special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates applicable under section 6 of the act have been issued to the firms listed below. The employment of learners under these certificates is limited to the terms and conditions therein contained and is subject to the provisions of Part 522. The effective and expiration dates, occupations, wage rates, number or proportion of learners, and learning period for certificates issued under the general learner regulations (§§ 522.1 to 522.14) are as indicated below; conditions provided in certificates issued under special industry regulations are as established in these regulations.

Single Pants, Shirts and Allied Garments, Women's Apparel, Sportswear, Rainwear and Other Odd Outerwear, Robes and Leather and Sheep-Lined Garments Divisions of the Apparel Industry Learner Regulations (29 CFR 522.160 to 522.166, as amended September 25, 1950; 15 F. R. 5701; 6326).

Aalfs-Baker Manufacturing Co., Le Mars, Iowa, effective 11-1-51 to 10-31-52; 10 learners (men's and boys' bib overalls and waistband overalls).

Aalfs-Baker Manufacturing Co., 1005 Fourth Street, Sioux City, Iowa, effective 11-1-51 to 10-31-52; 10 learners (blanket-lined jackets, unlined jackets, girls' and misses' denim jeans).

Associated Garment Co., Hillsboro, Ill., effective 11-5-51 to 5-4-52; 30 learners (juniors' and misses' dresses).

Atwood, Inc., Sparta, N. C., effective 10-31-51 to 10-30-52; 10 percent of the productive factory force (work shirts).

Bee & Gee Pants Co., 666 Sanderson Street, Throop, Pa., effective 11-2-51 to 11-1-52; 10 learners (men's and boys' trousers).

Blue Jeans Corp. of Vermont, Brattleboro, Vt., effective 11-1-51 to 4-30-52; 10 learners (cotton dungarees, slacks for children, men and women).

Blue Jeans Corp. of Vermont, Brattleboro, Vt., effective 11-9-51 to 11-8-52; 10 percent of the productive factory force (cotton dungarees, slacks for children, men, and women).

Commerce Manufacturing Co., 345 East Commerce Street, San Antonio, Tex., effective 11-1-51 to 10-31-52; five learners (boys' shirts, overalls, slacks, and jackets).

Crisfield Shirt & Pajama Co., Crisfield, Md., effective 11-2-51 to 11-1-52; 10 percent of the productive factory force or 10 learners, whichever is greater (boys' cotton shirts and pajamas).

Crisfield Shirt & Pajama Co., Inc., Princess Anne, Md., effective 11-2-51 to 11-1-52; 10 learners (boys' shirts and pajamas).

Empire Manufacturing Co., Winder, Ga., effective 11-9-51 to 11-8-52; 10 percent of the productive factory force (pants, overalls, coveralls, and work shirts).

The H. D. Lee Co., Inc., Box 455, Boaz, Ala., effective 11-2-51 to 5-1-52; 25 learners (men's work clothing, bib overalls, waistband overalls).

Lee Ray Sportswear Co., Box 23, Dover, Pa., effective 11-22-51 to 11-21-52; 5 learners (men's and boys' jackets).

Liberty Trouser & Overall Co., 2211 First Avenue North, Birmingham, Ala., effective 11-5-51 to 11-4-52; 10 percent of the productive factory force (men's and boys' overalls, trousers, jeans).

Malden Form Brassiere Co., Inc., Stanley Avenue and Second Street, Princeton, W. Va., effective 11-15-51 to 11-14-52; 10 percent of the productive factory force (brassieres).

Newport News Children's Dress Co., 824 Thirty-ninth Street, Newport News, Va., effective 11-17-51 to 11-16-52; 10 percent of the productive factory force (children's and girls' dresses and playsuits).

Nunnally & McCrea Co., 98 Mitchell Street SW., Atlanta, Ga., effective 11-9-51 to 11-8-52; 10 percent of the productive factory force (coveralls, dungarees, pants, etc.).

Pyke Manufacturing Co., 154 West Second Street, Salt Lake City, Utah, effective 11-2-51 to 11-1-52; 10 percent of the productive factory force (overalls and coveralls, twills, corduroys).

Quality First Shirt Co., 303 Market Street, Bridgeville, Del., effective 11-1-51 to 10-31-52; 10 learners (pajamas and sport shirts).

Rogol Manufacturing Co., 404 Jefferson Street, Camden, N. J., effective 11-3-51 to 11-2-52; 10 learners (cotton and rayon women's dresses).

M. C. Schrank Manufacturing Co., 515 Atlantic Avenue, Atlantic City, N. J., effective 11-2-51 to 11-1-52; 10 percent of the productive factory force (women's slips and night wear).

Wagener Manufacturing Co., Inc., Wagener, S. C., effective 11-6-51 to 11-5-52; 10 percent of the productive factory force (corduroy).

Wentworth Manufacturing Co., Lake City, S. C., effective 10-17-51 to 4-16-52; 50 learners (women's house dresses).

Cigar Industry Learner Regulations (29 CFR 522.201 to 522.211, as amended January 25, 1950; 15 F. R. 400).

The John Berger & Son Co., 475 North Cherry Street, Germantown, Ohio, effective 11-2-51 to 11-1-52; three learners; machine stripping operators, 160 hours at 60 cents per hour.

W. J. Neff & Co., Inc., Red Lion, Pa., effective 11-6-51 to 11-5-52; 10 percent of the productive factory workers engaged in the learner occupations; cigar machine operating, 320 hours; packing (cigars retailing for 6 cents or less), 160 hours; packing (cigars retailing for more than 6 cents), 320 hours; machine stripping, 160 hours; 60 cents per hour each.

Glove Industry Learner Regulations (29 CFR 522.220 to 522.231, as amended October 26, 1950; 15 F. R. 6888).

Wells Lamont Corp., 410 East Railroad Avenue, Fort Morgan, Colo., effective 10-31-51 to 10-30-52; 10 percent of the productive factory workers engaged in the learner occupations (full leather and leather palm work gloves).

Wells Lamont Corp., 217 East Main Street, Beardstown, Ill., effective 11-5-51 to 11-4-52; 10 learners (knit wool gloves).

Wells Lamont Corp., Eupora, Miss., effective 10-31-51 to 10-30-52; 10 percent of the productive factory workers engaged in the learner occupations (cotton flannel work gloves).

Wells Lamont Corp., Brownsville, Tenn., effective 10-31-51 to 10-30-52; 10 percent of the productive factory workers engaged in the learner occupations (leather palm and knit fabric).

Hosiery Industry Learner Regulations (29 CFR 522.40 to 522.51, as revised January 25, 1950; 15 F. R. 283).

Commonwealth Hosiery Mills, Inc., Ellerbe, N. C., effective 11-5-51 to 11-4-52; five learners.

Dapper Hosiery Mills, Inc., Clinton, S. C., effective 10-31-51 to 10-30-52; three learners.

Independent Telephone Industry Learner Regulations (29 CFR 522.82 to 522.93, as amended January 25, 1950; 15 F. R. 398).

West Iowa Telephone Co., Marcus, Iowa, effective 11-3-51 to 11-2-52.

Knitted Wear Industry Learner Regulations (29 CFR 522.68 to 522.79, as amended January 25, 1950; 15 F. R. 398).

Rice-Stix Factory Number 20, Slater, Mo., effective 11-4-51 to 11-3-52; 5 percent of the total number of productive factory workers engaged in the manufacture of men's and boys' shorts (men's and boys' underwear shorts).

Van Raalte Co., Inc., Dunkirk, N. Y., effective 10-31-51 to 10-30-52; 5 percent of the productive factory force engaged in the production of underwear (knit underwear).

Shoe Industry Learner Regulations (29 CFR 522.250 to 522.260; 15 F. R. 6546).

Middletown Footwear, Inc., 39 Railroad Avenue, Middletown, N. Y., effective 10-31-51 to 10-30-52, 10 percent of the productive factory force.

Stepping Stone Shoes, Inc., 2000 Mill Lane, Williamsport, Pa., effective 10-31-51 to 10-30-52; 10 percent of the productive factory force.

Town & Country Shoes, Inc., Odessa, Mo., effective 10-31-51 to 10-30-52; 10 percent of the productive factory force.

Town & Country Shoes, Inc., 110 North Missouri, Sedalia, Mo., effective 10-31-51 to 10-30-52; 10 percent of the productive factory force.

Town & Country Shoes, Inc., Warrensburg, Mo., effective 10-31-51 to 10-30-52; 10 percent of the productive factory force.

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.14).

American Uniform Co., Plant Number 2, 855 Euclid Avenue SE., Cleveland, Tenn., effective 11-2-51 to 5-1-52; 50 learners; Sewing machine operators, 240 hours at 65 cents per hour (towels, napkins, table cloths, aprons, sheets, laundry bags, etc.).

Bestell Lampshade Manufacturing Co., 1313 Delaware Avenue, Paulsboro, N. J., effective 11-6-51 to 5-5-52; 5 learners; Hand and machine sewers only, 320 hours at 65 cents per hour (lamp shades).

Colonial Products Co., Inc., Geneva, Ala., effective 10-31-51 to 4-29-52; 10 percent of the productive factory force; machine operators (except cutting), 320 hours, punchwork operators, 640 hours; for machine operators, not less than 65 cents per hour for the first 160 hours and at least 70 cents per hour for the remaining 160 hours; for punchwork operators, at least 65 cents per hour for the first 320 hours and not less than 70 cents per hour for the remaining 320 hours (bedspreads, rugs, and bath sets).

Hoover Products, Inc., Canfield, Ohio, effective 11-7-51 to 5-6-52; 4 learners; Assembler and spray painter, 160 hours at 65 cents per hour (plastic toys).

The following special learner certificate was issued in Puerto Rico to the company hereinafter named. The effective and expiration dates, the number of learners, the learner occupations, the length of the learning period and the learner wage rates are indicated, respectively.

Puerto Rico Mills, Inc., Puerto de Tierra, P. R., effective 10-30-51 to 6-30-52; 13 learners; Legging, 960 hours; footing, 960 hours; looping, 960 hours; seaming, 960 hours; topping, 480 hours; mending, 480 hours; winding, 480 hours; final inspection, 240 hours; foot inspection, 240 hours; leg inspection, 240 hours; each 30 cents per hour (hosiery).

Each certificate has been issued upon the employer's representation that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be cancelled in the manner provided in the regulations and as indicated in the certificates. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of Part 522.

Signed at Washington, D. C., this 6th day of November 1951.

MILTON BROOKE,
Authorized Representative
of the Administrator.

[F. R. Doc. 51-13655; Filed, Nov. 14, 1951; 8:45 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-1610, G-1611, G-1780]

MONTANA-DAKOTA UTILITIES CO.

ORDER REOPENING AND CONSOLIDATING PROCEEDINGS AND FIXING DATE OF HEARING

NOVEMBER 7, 1951.

On August 29, 1951, Montana-Dakota Utilities Co. (Applicant), a Delaware corporation with its principal place of business in Minneapolis, Minnesota, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, authorizing the construction and operation of approximately 8.7 miles of 12¾-inch pipeline extending from a point on Applicant's Worland line near Lovell, Wyoming, to the Garland Field, west of Byron, Wyoming, replacing an existing line consisting of various sizes of pipe, ranging from 4-inch to 8-inch.

On May 23, 1951, the Commission issued an order in the Matters of Montana-Dakota Utilities Co., Billings Gas Company, Docket Nos. G-1610, G-1611, authorizing Applicant (1) to acquire and operate the natural-gas facilities of the Billings Gas Company, The Rocky Mountain Gas Company, and the Big Horn Gas Company, and (2) to construct and operate, among other facilities, the facil-

ities described in paragraph 4 (a) of said order consisting of approximately 12½ miles of 8-inch pipeline extending from Elk Basin Compressor Plant of Billings Gas Company to a point on the Worland Pipe Line in Carbon County, Montana.

The application, filed August 29, 1951, in Docket No. G-1780, recites an inability to procure pipe for the construction of the facilities described in paragraph 4 (a) of the Commission's order of May 22, 1951, in lieu of which Applicant desires to construct and operate the facilities described in the application filed in G-1780, for which pipe is available.

The Commission finds:

(1) It would be in the public interest to reopen the proceedings in Docket Nos. G-1610 and G-1611 for the purpose of considering the present need of the facilities previously authorized, as described in paragraph 4 (a) of the aforementioned order of May 22, 1951, and the desirability of authorizing in lieu thereof, the facilities described in the application filed in Docket No. G-1780; and to consolidate Docket Nos. G-1610 and G-1611 with those proceedings in Docket No. G-1780 for the purpose of hearing.

(2) The consolidated proceedings are properly matters for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure. Applicant having requested that the applications be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings, and no request to be heard, protest, or petition having been filed subsequent to the giving of due notice in the FEDERAL REGISTER on March 6, 1951 (16 F. R. 2108) of the application in G-1610, and on September 22, 1951 (16 F. R. 9705) of the application in G-1780.

The Commission orders:

(A) The proceedings in Docket Nos. G-1610 and G-1611 be and the same are hereby reopened for the purpose of considering the present need of the facilities previously authorized, as described in paragraph 4 (a) of the aforementioned order of May 22, 1951, and the desirability of authorizing in lieu thereof, the facilities described in the application filed in Docket No. G-1780; and consolidated with Docket No. G-1780 for the purpose of hearing.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a hearing be held on November 21, 1951, at 9:45 a. m., e. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by such applications: *Provided, however,* That the Commission may, after a noncontested hearing, forthwith dispose of the proceedings pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37

(f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Date of issuance: November 8, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-13656; Filed, Nov. 14, 1951;
8:46 a. m.]

[Docket No. G-1640]

PUBLIC SERVICE CORP. OF TEXAS

ORDER FIXING DATE OF HEARING

NOVEMBER 7, 1951.

On March 26, 1951, Public Service Corporation of Texas (Applicant) a Delaware corporation having its principal place of business at Fort Worth, Texas, filed an application, which was supplemented on August 31, 1951, for an order pursuant to section 7 (a) of the Natural Gas Act, as amended, directing Northern Natural Gas Company (Northern Natural) and Cities Service Gas Company (Cities Service), or either of them, to establish physical connection of their transportation facilities with the facilities of Applicant, and to sell and deliver to Applicant natural gas for use by its consumers. Cities Service, on April 27, 1951, and Northern Natural, on April 30, 1951, filed answers protesting the granting of the application.

Due notice of the filing of the application has been given, including publication in the FEDERAL REGISTER on April 6, 1951 (16 F. R. 3020).

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a public hearing be held on December 10, 1951, commencing at 10:00 a. m., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by the application.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Date of issuance: November 8, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-13657; Filed, Nov. 14, 1951;
8:46 a. m.]

[Docket Nos. 6-1668, G-1828]

SOUTHERN UNION GAS CO. AND EL PASO
NATURAL GAS CO.

ORDER CONSOLIDATING PROCEEDINGS AND
FIXING DATE OF HEARING

NOVEMBER 7, 1951.

On April 17, 1951, Southern Union Gas Company (Southern Union) filed an ap-

plication, as supplemented and amended on May 7, May 28, July 24, and October 11, 1951 to construct a 300 hp. compressor station and 10 miles of 8-inch pipeline on its pipeline system which serves the communities of Clovis, Portales, and Tucumcari, New Mexico. Southern Union obtains its entire supply of natural gas for this system from West Texas Gas Company (West Texas) which receives some of this gas from El Paso Natural Gas Company (El Paso).

On September 24, 1951, El Paso filed an application for an order permitting and approving partial abandonment of this natural gas service to West Texas.

The Commission finds: Good cause exists and it is appropriate and necessary for carrying out the provisions of the Natural Gas Act, as amended, to consolidate the above-entitled proceedings for purposes of hearing and to hold public hearings as hereinafter provided and ordered.

The Commission orders:

(A) The proceedings in Docket Nos. G-1668 and G-1828 be and the same hereby are consolidated for purpose of hearing.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a public hearing be held in the consolidated proceedings, commencing at 10:00 a. m., on December 12, 1951, in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by the applications referred to in paragraph (A) hereof.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Date of issuance: November 8, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-13658; Filed, Nov. 14, 1951;
8:46 a. m.]

[Docket No. G-1677]

COLORADO INTERSTATE GAS CO.

ORDER FIXING DATE OF HEARING

NOVEMBER 7, 1951.

On April 24, 1951, Colorado Interstate Gas Company (Applicant) filed an application, supplemented on July 26, 1951, at Docket No. G-1677, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing the construction and operation of certain natural-gas pipeline additions to its system subject to the jurisdiction of the Commission, all as more fully described in such application on file with the Commission and open to public inspection, public notice thereof having been given, including publication in the FEDERAL REGISTER on May 17, 1951 (16 F. R. 4632).

Applicant has requested that an abridged hearing be held in this matter pursuant to § 1.32 of the Commission's rules of practice and procedure.

The Commission finds: It is in the public interest to deny the request for an abridged hearing in this matter.

The Commission orders:

(A) The request for an abridged hearing in this matter be and the same is hereby denied.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a public hearing be held commencing on December 3, 1951, at 10:00 a. m., e. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, NW., Washington, D. C., concerning the matters involved and the issues presented by the application as supplemented in this proceeding.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Date of issuance: November 8, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-13659; Filed Nov. 14, 1951;
8:47 a. m.]

[Docket No. G-1799]

SOUTHERN NATURAL GAS CO.

ORDER FIXING DATE OF HEARING

NOVEMBER 7, 1951.

On October 1, 1951, Southern Natural Gas Company (Applicant), a Delaware corporation having its principal place of business at Birmingham, Alabama, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, authorizing the sale and delivery of natural gas to Eason Pottery Works in Russell County, Alabama, and, in connection therewith, the construction and operation of a meter and other equipment for the measurement of gas, together with approximately 100 feet of 4½-inch pipeline. Said application is on file with the Commission and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure, Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for noncontested proceedings and no protest or petition to intervene having been filed subsequent to the giving of due notice of the filing of the application, including publication in the FEDERAL REGISTER on October 16, 1951 (16 F. R. 10581).

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction

conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a hearing be held on November 23, 1951, at 9:45 a. m., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW, Washington, D. C., concerning the matters involved and the issues presented by such application, as supplemented: *Provided, however*, That the Commission may, after a noncontested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the rules of practice and procedure.

(B) Interested State Commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Date of issuance: November 8, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-13660; Filed, Nov. 14, 1951;
8:47 a. m.]

[Docket No. E-6155]

SUSQUEHANNA POWER CO. ET AL.

NOTICE OF ORDER REDUCING RATES AND
TERMINATING RATE INVESTIGATION

NOVEMBER 8, 1951.

In the matter of The Susquehanna Power Company, Philadelphia Electric Power Company, and The Susquehanna Electric Company; Docket No. E-6155.

Notice is hereby given that, on November 7, 1951, the Federal Power Commission issued its order, entered November 7, 1951, reducing rates and terminating rate investigation in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-13661; Filed, Nov. 14, 1951;
8:47 a. m.]

[Docket No. E-6387]

MISSOURI PUBLIC SERVICE CO.

NOTICE OF APPLICATION

NOVEMBER 8, 1951.

Take notice that on November 7, 1951, an application was filed with the Federal Power Commission, pursuant to section 203 of the Federal Power Act, by Missouri Public Service Company (hereinafter called "Applicant"), a corporation organized under the laws of the State of Missouri and doing business in said State, with its principal business office at Warrensburg, Missouri, seeking an order authorizing the merger or consolidation of its entire facilities with those of Missouri Gas & Electric Company (hereinafter called "Gas & Electric"), a Missouri corporation with its principal business office at Lexington, Missouri. Applicant proposes to acquire all of the assets and assume all of the liabilities of Gas & Electric. When the merger is effected each of the 133,705

outstanding shares of Common Stock of Applicant will be changed into three shares of the new Common Stock of Applicant, and each of the 25,350 outstanding shares of Common Stock of Gas & Electric will be changed into five shares of the new Common Stock of Applicant. Promptly after the merger is effected \$2,000,000 principal amount of a new Series of bonds (Series F) 3½ percent, dated January 1, 1952, due January 1, 1977, will be issued by Applicant in exchange for the Series A, B, C, and D Bonds of Gas & Electric, aggregating \$2,000,000 principal amount. Said new Series of Bonds of the Applicant will be of slightly shorter maturity and approximately ½ percent higher interest rate than the average maturity and interest rates of the Series A, B, C, and D Bonds of Gas & Electric to be retired; all as more fully appears in the application on file with the Commission.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before the 28th day of November 1951, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-13688; Filed, Nov. 14, 1951;
8:51 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 26551]

PETROLEUM PRODUCTS FROM SAVANNAH
AND PORT WENTWORTH, GA., TO OTHER
POINTS IN GEORGIA

APPLICATION FOR RELIEF

NOVEMBER 9, 1951.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for the Atlantic Coast Line Railroad Company and other carriers.

Commodities involved: Petroleum products, in carloads.

From: Savannah and Port Wentworth, Ga.

To: Atlanta, Ga., and points grouped therewith, and Covington and Decatur, Ga.

Grounds for relief: To meet intrastate rates.

Schedules filed containing proposed rates: C. A. Spaninger's tariff I. C. C. No. 1253, Supp. 17.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect

to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL]

W. P. BARTEL,
Secretary.

[F. R. Doc. 51-13675; Filed, Nov. 14, 1951;
8:51 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-1335]

ST. LOUIS CAR CO.

NOTICE OF APPLICATION TO STRIKE FROM LISTING AND REGISTRATION, AND OF OPPOR- TUNITY FOR HEARING

NOVEMBER 7, 1951.

The Midwest Stock Exchange, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) promulgated thereunder, has made application to strike from registration and listing the Common Stock, \$10.00 Par Value, of St. Louis Car Company.

The application alleges that the reasons for striking this security from registration and listing on this exchange are as follows:

(1) The Marquis Foundation has acquired substantially all of the outstanding shares of the above security, leaving 2,152 shares in the hands of others.

(2) The amount of 2,152 shares is too small to maintain a reasonable exchange market.

(3) This security was suspended from trading on the Midwest Stock Exchange on September 10, 1951.

Upon receipt of a request, prior to December 4, 1951, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms or conditions. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application, and other information contained in the official file of the Commission pertaining to this matter.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F. R. Doc. 51-13663; Filed, Nov. 14, 1951;
8:48 a. m.]

[File No. 54-178]

UNITED LIGHT AND RAILWAYS CO. ET AL.

NOTICE OF FILING REGARDING FEES AND EX- PENSES IN CONNECTION WITH PLAN

NOVEMBER 8, 1951.

On January 10, 1950, the Commission issued its order approving a plan filed by The United Light and Railways Company ("Railways"), a registered holding company, and its subsidiary registered holding company, Continental Gas & Electric Corporation ("Continental"), pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935 ("act"), which plan provided for the liquidation and dissolution of Railways and Continental.

The Commission in said order reserved jurisdiction to determine the reasonableness and the allocation of all fees and expenses and other remuneration incurred or to be incurred in connection with the plan and the transactions incident thereto, to entertain such further proceedings, to take such further action, to make such supplemental findings, and to enter such further orders as deemed appropriate to secure full compliance with the act.

Notice is hereby given that Railways has filed an application (designated Supplemental Application No. 12) requesting approval of fees and expenses incurred in connection with the plan and the consummation of the various steps of the plan as follows:

	Fees	Expenses
Sidley, Austin, Burgess & Smith, counsel	\$40,000	\$1,751.28
Johnson, Lucas, Graves & Fane, counsel	3,500	-----
Arthur Andersen & Co., accountants	37,000	3,027.32
Depositories for distributions	-----	16,508.46
Sale of Mason City and Clear Lake R. R.	-----	3,654.02
Printing, mailing, and postage	-----	22,411.25
Travel, telephone, telegraph, etc.	-----	1,839.18
Total	80,500	49,191.52

The record contains a statement showing that corporate administrative expenses for the period from January 1, 1950, through September 30, 1951, aggregated \$586,775 including salaries and wages of \$255,828, separation allowance of \$81,199, general office rents \$46,104, corporate and fiscal expenses (transfer agent and registrar fee) \$33,361, general taxes \$21,316, expenses of officers, directors and employees \$24,613, and other corporate expenses.

It appears that Continental was liquidated and the common stocks of the five major subsidiaries were sold and distributed in the manner contemplated by the plan during the period February 16, 1950, to August 22, 1950; and that Railways will, in the near future, transfer to Iowa-Illinois Gas and Electric Company, the last major subsidiary to be divested, all of its remaining assets consisting for the most part of cash. To the extent of the cash so transferred, Iowa-Illinois Gas and Electric Company will assume the debts, liabilities and obligations of Railways, all in accordance with the provisions of the plan.

Notice is further given that any interested person may, not later than November 19, 1951, at 5:30 p. m., e. s. t., request the Commission in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues, if any, of fact or law raised by said application which he proposes to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. Any time after November 19, 1951, said application, as filed or as amended, may be granted as provided in Rule U-23 of the rules and regulations promulgated under the act.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F. R. Doc. 51-13664; Filed, Nov. 14, 1951;
8:48 a. m.]

[File Nos. 54-111, 59-12]

AMERICAN & FOREIGN POWER CO., INC.,
ET AL.

ORDER APPROVING PLAN

NOVEMBER 7, 1951.

In the matter of American & Foreign Power Company, Inc., Electric Bond and Share Company, File No. 54-111; Electric Bond and Share Company, et al., respondents; File No. 59-12.

American & Foreign Power Company, Inc. ("Foreign Power"), a registered holding company and a subsidiary company of Electric Bond and Share Company ("Bond and Share"), also a registered holding company, having filed an application pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935 ("the act") and other applicable provisions thereof for approval of a plan, as amended, which application has been joined in by Bond and Share, providing, among other things, for the recapitalization and reorganization of Foreign Power through the retirement of certain outstanding securities and the issuance and exchange therefor of certain new securities, and providing also for the cancellation and retirement of the outstanding option warrants and preferred stock allotment certificates of Foreign Power; and

Public hearings having been duly held after appropriate notice, at which hearings all interested persons were afforded opportunity to be heard; and

Foreign Power having requested the Commission to enter an Order finding that the transactions proposed in the plan are necessary to effectuate the provisions of section 11 (b) of the act and are fair and equitable to the persons affected thereby, and containing recitals in accordance with the requirements of the Internal Revenue Code, as amended, including section 1808 (f) and supplemental R thereof; and

Foreign Power and Bond and Share having further requested the Commission pursuant to section 11 (e) of the

act to apply to an appropriate court in accordance with the provisions of section 18 (f) of the act to enforce and carry out the terms and provisions of the plan, as amended; and

The Commission having considered the entire record in the above-captioned matter and having this day filed its findings and opinion therein finding that the plan is necessary to effectuate the provisions of section 11 (b) of the act and the Commission's order dated May 2, 1949, directing simplification of Foreign Power's capital structure, and that it is fair and equitable to the persons affected thereby; and

The Commission having also considered the motions made in these proceedings by various of the participants as set forth in the findings and opinion issued herewith, and having also considered the request made by Dr. S. Z. Kantor for reconsideration of the Commission's denial of his request for oral argument in the matter; and

The Commission having also considered the proposal of Foreign Power that the amount of \$84,254 be paid to the plaintiffs, their attorneys, and accountants in certain of the stockholders' actions enumerated in the plan, and that jurisdiction be reserved with respect to the other actions there enumerated;

It is ordered, On the basis of the record herein and said findings and opinion, pursuant to section 11 (e) of the act and the other applicable provisions thereof, that said plan, as amended, be and it hereby is approved subject to the terms and conditions contained in Rule U-24 and subject to the following additional terms and conditions:

1. That this order shall not be operative to authorize consummation of the transactions proposed in the plan, as amended, until an appropriate United States District Court shall, upon application thereto, enter an order enforcing the plan, as amended.

2. That jurisdiction be and hereby is specifically reserved to determine the reasonableness and appropriate allocation of fees and expenses and other remuneration incurred or to be incurred in connection with the plan, as amended, by Foreign Power, Bond and Share, and the participants in the proceedings, except with respect to the proposed payment of \$84,254 incident to the stockholders' actions enumerated in the plan, as amended.

3. That jurisdiction be and hereby is specifically reserved with respect to the proposed composition of the first Board of Directors of Foreign Power upon or after consummation of the plan and with respect to the carrying out of Foreign Power's representation that it will be its policy to maintain public representation on its Board of Directors.

4. That jurisdiction be and hereby is specifically reserved to take such further action as the Commission may deem appropriate to effectuate the provisions of the plan concerning efforts of the company to locate persons entitled to securities or cash by reason of their holdings of the securities of Foreign Power.

5. That jurisdiction be and hereby is specifically reserved to entertain such

further proceedings, to make such supplemental findings, to enter such further orders, and to take such further action as the Commission may deem appropriate in connection with the plan, as amended, the transactions incident thereto, and the consummation thereof.

It is further ordered, That the application of Bond and Share to surrender its present holdings of the securities of Foreign Power and to acquire in exchange shares of the new common stock of Foreign Power as proposed in the plan, as amended, be and hereby is granted, subject to such further action as the Commission may take in connection therewith in other appropriate proceedings affecting Bond and Share.

It is further ordered, That the motions heretofore made by participants in the proceedings, as set forth in the findings and opinion issued herewith, be and hereby are denied, and that the request for reconsideration of the Commission's denial of Kantor's request for oral argument be and the same hereby is denied.

It is further ordered, That payments in the aggregate amount of \$84,254, as proposed by Foreign Power, to the plaintiffs, their attorneys and accountants in the following court actions referred to in the amended plan:

Joseph L. Freund, Plaintiff, v. Sosthenes Behn et al., Defendants; Constantine J. Andromidas, Plaintiff, v. Sosthenes Behn et al., Defendants; Elizabeth Peyser, Plaintiff, v. Curtis E. Calder et al., Defendants; Ida Gelfand as Executrix under the last will and testament of Samuel Gelfand, deceased, Plaintiff, v. Curtis E. Calder et al., Defendants; Harold Goldberg, Plaintiff, v. Sosthenes Behn et al., Defendants; Anna E. Mortensen, Plaintiff, v. Sosthenes Behn et al., Defendants,

be and hereby are approved:

It is further ordered and recited, That the issues, distributions, transfers and exchanges of securities and the transactions specified and itemized below, all as provided by the plan as amended are necessary or appropriate to the integration or simplification of the holding company system of which Foreign Power and Bond and Share are members and are necessary or appropriate to effectuate the provisions of section 11 (b) of the act:

(1) The issuance by Foreign Power of 4.80 percent Debentures in principal amount not to exceed \$67,564,600.

(2) The issuance by Foreign Power of not to exceed 8,000,000 shares of new Common Stock without par or face value.

(3) The distribution and transfer by Foreign Power of \$90 principal amount of its 4.80 percent Debentures and 3¾ shares of its new Common Stock in exchange for each share of its Preferred Stock (\$7), including rights to all accumulated and unpaid dividends thereon, surrendered pursuant to the plan by the holders of said Preferred Stock (\$7) other than Bond and Share, and in addition the distribution and transfer by Foreign Power for each share of Preferred Stock (\$7) so surrendered of additional new Common Stock at the rate of 0.178½ of a share of Common Stock per year for the period from October 1, 1950, to the effective date of the plan.

(4) The distribution and transfer by Foreign Power of \$80 principal amount of its 4.80 percent Debentures and 3 shares of its new Common Stock in exchange for each share of its \$6 Preferred Stock, including rights to all accumulated and unpaid dividends thereon, surrendered pursuant to the plan by the holders of said \$6 Preferred Stock other than Bond and Share, and in addition the distribution and transfer by Foreign Power for each share of \$6 Preferred Stock so surrendered of additional new Common Stock at the rate of 0.144 of a share of Common Stock per year for the period from October 1, 1950, to the effective date of the plan.

(5) The distribution and transfer by Foreign Power of 85/100 of a share of its new Common Stock in exchange for each share of its Second Preferred Stock, Series A (\$7), including rights to all accumulated and unpaid dividends thereon, surrendered pursuant to the plan by the holders of said Second Preferred Stock, Series A (\$7) other than Bond and Share.

(6) The distribution and transfer by Foreign Power of 1/50 of a share of its new Common Stock in exchange for each share of its existing Common Stock surrendered pursuant to the plan by the holders of its existing Common Stock other than Bond and Share.

(7) The transfer by Bond and Share to Foreign Power of its investment in Foreign Power consisting of \$49,500,000 of Notes of Foreign Power, 13,800 shares of Preferred Stock (\$7), 65,809.10 shares of \$6 Preferred Stock, 2,158,236 shares of Second Preferred Stock, Series A (\$7) including rights to all accumulated and unpaid dividends on said Preferred Stocks, 881,500 shares of existing Common Stock and 5,812,884 existing Option Warrants to purchase existing Common Stock of Foreign Power, and the distribution and transfer by Foreign Power in exchange therefor of 3,856,723 shares of its new Common Stock plus additional shares of new Common Stock at the rate of 2,730.3 shares per month from October 1, 1950, to the effective date of the plan.

(8) All other issues, distributions, transfers and exchanges of securities which are required in order to carry out the plan.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 51-13662; Filed, Nov. 14, 1951;
8:47 a. m.]

[File No. 70-2570]

GENERAL PUBLIC UTILITIES CORP. AND JERSEY CENTRAL POWER & LIGHT CO.

ORDER RELEASING JURISDICTION OVER LEGAL FEES AND EXPENSES

NOVEMBER 8, 1951.

By order dated March 14, 1951, this Commission granted and permitted to become effective a joint application-declaration of General Public Utilities Corporation ("GPU"), a registered holding company, and its utility subsidiary, Jersey Central Power & Light Company

("Jersey Central"), proposing: (i) The issuance and sale by Jersey Central, at competitive bidding, of \$1,500,000 principal amount of first mortgage bonds and 40,000 shares of preferred stock; (ii) the issuance and sale by Jersey Central and the purchase by GPU of 350,000 shares of common stock for an aggregate consideration of \$3,500,000 in cash; and (iii) the issuance and sale by GPU to commercial banks of \$3,500,000 principal amount of promissory notes. Said order reserved jurisdiction, *inter alia*, over all fees and expenses of counsel in connection with the proposed transactions.

By orders dated April 23, 1951 and May 8, 1951, the Commission, modified its order of March 14, 1951 to permit, *inter alia*, Jersey Central to enter into negotiations for the private sale of the preferred stock, the Commission having been advised that Jersey Central, in response to its public invitation therefor, had received but one bid for the bonds and one bid for the preferred stock, both of which were returned unopened, and that Jersey Central had decided to postpone the sale of the bonds, and consummate the sale of its preferred and common stocks.

The time for compliance with said orders of the Commission having expired pursuant to the provisions of Rule U-24 promulgated under the Public Utility Holding Company Act of 1935, and Jersey Central having filed a statement under said Rule setting forth that it has issued and sold its common stock and intends to postpone indefinitely the issuance and sale of said bonds and preferred stock; and

The record having been completed with respect to the fees and expenses of counsel proposed to be charged Jersey Central in connection with the foregoing matters, which are as follows: Autenrieth & Rochester, counsel to Jersey Central, fee \$3,500, expenses \$294.84; Berlack & Isaacs, special counsel to Jersey Central, fee \$2,150, expenses \$253.99; and Beekman & Bogue, counsel for the purchasers of the bonds and preferred stock, fee \$4,500, expenses \$383.20; and

The Commission having considered the record and finding that said fees and expenses are not unreasonable:

It is hereby ordered, That the jurisdiction heretofore reserved over all fees and expenses of counsel in connection with the proposed transactions be, and the same hereby is, released.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 51-13665; Filed, Nov. 14, 1951;
8:48 a. m.]

[File No. 811-73]

DIVERSIFIED TRUSTEE SHARES, SERIES D,
AND AMERICAN SHARES CORP.

NOTICE OF APPLICATION

NOVEMBER 7, 1951.

Notice is hereby given that American Shares Corporation, (applicant), located at 120 Wall Street, New York 5, New

York, the depositor of a registered investment company, Diversified Trustee Shares, Series D, has filed an application pursuant to section 8 (f) of the Investment Company Act of 1940 for an order of the Commission declaring that Diversified Trustee Shares, Series D, has ceased to be an investment company within the meaning of the act, and has requested an order exempting Diversified Trustee Shares, Series D, from the provisions of section 30 (a) of the act to the extent that the trust is required to file annual reports on Form N-30A-2 for its fiscal years ending March 31, 1949, 1950 and 1951.

The application discloses that Diversified Trustee Shares, Series D, a unit investment trust, was created under a trust indenture dated as of April 15, 1931, by and between American Trustee Shares Corporation (now known as American Shares Corporation), as Depositor, and The New York Trust Company, as Trustee. Pursuant to the terms of the indenture with respect to termination, the underlying securities of the trust were fully liquidated as of July 22, 1947. There were outstanding on the date of liquidation, 290,000 trust shares entitled to share in the net proceeds of liquidation. The Trustee has made liquidating distributions, amounting in the aggregate to \$6.9318 per share, to certificate holders upon surrender of their certificates. Such distributions were as follows: November 3, 1947, \$6.50 per share; June 15, 1948, \$0.35 per share; and a final distribution on September 15, 1948, of \$0.0818 per share. It appears that all liabilities of the trust have been provided for and that as of March 26, 1951, there remained unsurrendered a total of 9,750 trust shares, a figure slightly in excess of 3 percent of the total number of trust shares outstanding on the date of liquidation. The Trustee, as of March 26, 1951, held \$67,606.93 in the liquidation account for distribution upon the surrender of the certificates representing 9,750 shares and certain unclaimed funds in prior distribution accounts amounting in the aggregate to \$6,103.60. The unsurrendered certificates and coupons, evidencing the right of the holders thereof to receive the amounts indicated above, are in bearer form. The names and addresses of the present holders of the unsurrendered certificates and coupons are unknown to the Trustee and to the Applicant. However, the Trustee's records disclose the names and addresses of some 684 persons who cannot be identified with the record of liquidation distributions and the Trustee, on August 24, 1951, mailed a letter to such persons stating that some holders of certificates had not surrendered their certificates for payment of the liquidation distributions. Applicant has caused a notice, requesting that the unsurrendered certificates be presented to the Trustee for payment, to be published in The New York Times on September 16, 1951. The undistributed funds are held in trust by the Trustee, subject to the laws of the State of New York, for distribution upon the surrender of the aforesaid certificates and coupons. The application states that under the present laws of the State

of New York, with respect to abandoned property, the undistributed funds will continue to be held as trust funds for an indefinite period in the future for the benefit of the holders of the certificates and coupons, or their assignees, and that no other person or persons will have any right to demand or receive payment thereof.

All of the Trust's assets from the close of its fiscal year ended March 31, 1948, have been held by the Trustee in cash for distribution, subject to the payment of taxes and legal fees, for which provision has been made. Applicant states that under the circumstances no useful purpose would be served by filing annual reports on Form N-30A-2 for the fiscal years of the Trust ended March 31, 1949, 1950 and 1951.

All interested persons are referred to said application, which is on file in the Washington, D. C., office of this Commission, for more detailed statement of the matters of fact and law therein asserted.

Notice is further given that an order granting the application, upon such conditions as the Commission may deem necessary or appropriate, may be issued by the Commission at any time on or after November 27, 1951, unless a hearing upon the application is ordered by the Commission as provided in Rule N-5 of the rules and regulations promulgated under the act. Any interested person may, not later than November 26, 1951, at 5:30 p. m., e. s. t., submit to the Commission in writing his views or any additional facts bearing upon the application or the desirability of a hearing thereon, or request in writing that the Commission order a hearing to be held thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street, N. W., Washington 25, D. C., and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact or law raised by the application which he desires to controvert.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F. R. Doc. 51-13666; Filed, Nov. 14, 1951;
8:48 a. m.]

ECONOMIC STABILIZATION AGENCY

Office of the Administrator

[Gen. Order 2, Amdt.]

GO 2—FUNCTIONS WITH RESPECT TO
PRICE STABILIZATION TO BE PERFORMED
BY THE DIRECTOR OF PRICE STABILIZATION

General Order No. 2, dated May 1, 1951, is amended by the addition of the following sections:

SEC. 3. Disallowance of price violation payments in determining business costs or expenses. .01 There are hereby redelegated to the Director of Price Stabilization so much of the functions of the Administrator pursuant to the

Defense Production Act of 1950, as amended, and provided for in Executive Order 10161 as amended by Executive Order 10281, as is necessary for the performance of the functions with respect to enforcement provisions relating to the disallowance of price violation payments in determining business costs or expenses as provided for in section 405 (a) and section 409 (d) of the Defense Production Act of 1950, as amended.

.02 The authority delegated in this section may be redelegated by the Director of Price Stabilization to other officials of the Office of Price Stabilization, including authorization for successive redelegations, subject to such conditions or limitations as the Director may prescribe.

SEC. 4. General. .01 The delegations of authority in this order reflect the Administrator's policy to delegate to constituent organizations operating authority to the fullest practicable extent consistent with his ultimate responsibility for the conduct of the Agency's activities in a reasonable and efficient manner. The delegated authority shall be exercised within the framework of such general policies as the Administrator may prescribe, with particular reference to those contained in the Economic Stabilization Agency Manual of Orders.

ERIC JOHNSTON,
Administrator.

NOVEMBER 13, 1951.

[F. R. Doc. 51-13746; Filed, Nov. 13, 1951;
4:23 p. m.]

[Determination 1, Amdt. 11]

APPROVAL OF EXTENT OF RELAXATION OF CREDIT CONTROLS IN CRITICAL DEFENSE HOUSING AREAS

Section 3, *Areas affected*, of Determination No. 1 approving the extent of the relaxation of real estate construction credit controls in critical defense housing areas published in 16 F. R. 9582, September 20, 1951, is hereby amended by adding the following areas thereto, in view of the joint certification action taken by the Secretary of Defense and the Director of Defense Mobilization dated October 26, 1951 (see Docket Nos. 79 and 154) and November 7, 1951 (see Docket Nos. 288 and 289), and in view of the defense housing programs of credit restrictions approved for said areas by the Housing and Home Finance Agency (CR 2, 16 F. R. 3303, CR 3, 16 F. R. 3835):

Area and Date

- 43. Camden-Shumaker, Ark., November 5, 1951.
- 44. Fort Sill-Lawton, Okla., October 23, 1951.
- 45. Fort Campbell, Ky., November 5, 1951.
- 46. Fort Knox, Ky., November 5, 1951.

ERIC JOHNSTON,
Administrator.

NOVEMBER 14, 1951.

[F. R. Doc. 51-13760; Filed, Nov. 14, 1951;
10:32 a. m.]

Office of Price Stabilization

[Ceiling Price Regulation 7, Section 43,
Special Order 728]

HOLGATE BROTHERS CO..

CEILING PRICES AT RETAIL

Statement of considerations. In accordance with section 43 of Ceiling Price Regulation 7, the applicant named in the accompanying special order, Holgate Brothers Company, Kane, Pennsylvania, has applied to the Office of Price Stabilization for maximum resale prices for retail sales of certain of its articles. Applicant has submitted the information required under this section and has produced evidence which in the judgment of the Director indicates that the applicant has complied with other stated requirements.

The Director has determined on the basis of information available to him, including the data and certified conclusions of fact submitted by the applicant, that the retail ceiling prices requested and which are established by this special order are no higher than the level of ceiling prices under Ceiling Price Regulation 7.

The special order contains provisions requiring each article to be marked by the applicant with the retail ceiling price established by the accompanying special order. The applicant and intermediate distributors are required to send purchasers of the article a copy of this special order, a notice listing retail ceiling prices for each cost line and, in specified cases, of subsequent amendments of this special order.

The special order also requires applicant to file with the Distribution Branch regular reports setting forth the number of units of each article covered by this special order which applicant has delivered during the reporting period. This requirement conforms with the provisions of section 43, Ceiling Price Regulation 7.

Special provisions. For the reasons set forth in the statement of considerations and pursuant to section 43 of Ceiling Price Regulation 7, this special order is hereby issued.

1. *Ceiling prices.* The ceiling prices for sales at retail of toys sold through wholesalers and retailers and having the brand name(s) "Holgate Toys" shall be the proposed retail ceiling prices listed by Holgate Brothers Company, Kane, Pennsylvania, hereinafter referred to as the "applicant" in its application dated September 27, 1951 and filed with the Office of Price Stabilization, Washington 25, D. C. (and supplemented and amended in the manufacturer's application dated November 6, 1951).

A list of such ceiling prices will be filed by the Office of Price Stabilization with the Federal Register as an appendix to this special order as soon as practicable. On and after the date of receipt of a copy of this special order, with notice of prices annexed, but in no event later than January 8, 1952, no seller at retail may offer or sell any article covered by this special order at a price higher than the ceiling price established by this special order. Sales may be made, of course, at less than the ceiling prices.

2. *Marking and tagging.* On and after January 8, 1952, Holgate Brothers Company must mark each article for which a ceiling price has been established in paragraph 1 of this special order with the retail ceiling price under this special order or attach to the article a label, tag, or ticket stating the retail ceiling price. This mark or statement must be in the following form:

OPS—Sec. 43—CPR 7

Price \$-----

On and after February 9, 1952, no retailer may offer or sell the article unless it is marked or tagged in the form stated above. Prior to February 9, 1952, unless the article is marked or tagged in this form, the retailer shall comply with the marking, tagging and posting provisions of the regulation which would apply in the absence of this special order.

Upon issuance of any amendment to this special order which either adds an article to those already listed in the application or changes the retail ceiling price of a listed article, the applicant named in this special order must comply as to each such article with the pre-ticketing requirements of this paragraph within 30 days after the effective date of the amendment. After 60 days from the effective date, no retailer may offer or sell the article unless it is ticketed in accordance with the requirements of this paragraph. Prior to the expiration of the sixty-day period, unless the article is so ticketed, the retailer must comply with the marking, tagging, and posting provisions of the regulation which would apply in the absence of this special order.

3. *Notification to resellers.*—(a) *Notices to be given by applicant.* (1) After receipt of this special order, a copy of this special order and the notice described below shall be sent by the applicant to each purchaser for resale on or before the date of the first delivery of any article covered in Paragraph 1 of this special order.

(2) Within fifteen days after the effective date of this special order, the applicant shall send a copy of this special order and the notice described below to each purchaser for resale to whom within two months immediately prior to the receipt of this special order the applicant had delivered any article covered by Paragraph 1 of this special order.

(3) The applicant must notify each purchaser for resale of any amendment to this special order in the same manner, annexing to the amendment an appropriate notice as described below.

(4) The applicant shall annex to this special order or amendment a notice listing the style or lot number, name, or other description of each item covered by this special order or amendment and its corresponding retail ceiling price. The notice shall be in substantially the following form:

(Column 1)	(Column 2)
Item (style or lot number or other description)	Retailer's ceiling price for articles listed in column 1
-----	\$-----

(5) Within 15 days after the effective date of this special order or any amendment thereto, two copies of the ceiling price notice above described must be filed by the applicant with the Distribution Branch, Consumer Soft Goods Division, Office of Price Stabilization, Washington 25, D. C.

(6) The applicant must supply each purchaser for resale other than a retailer with sufficient copies of this special order, amendment and notices to permit such purchasers for resale to comply with the notification requirements of this special order.

(b) *Notices to be given by purchasers for resale (other than retailers).* (1) A copy of this special order, together with the annexed notice of ceiling prices described in subparagraph (a) (4) of this section, shall be sent by each purchaser for resale (other than retailers) to each of his purchasers on or before the date of the first delivery after receipt of a copy of this special order.

(2) Within 15 days of receipt of this special order and the annexed notice, each purchaser for resale (other than retailers) shall send a copy of the order and notice to each of his purchasers to whom, within two months prior to receipt of this special order, his records indicate he had delivered any article covered by paragraph 1 of this special order.

(3) Each purchaser for resale (other than retailers) must notify each purchaser of any amendment to this special order in the same manner, annexing to the amendment an appropriate notice as described above.

4. *Reports.* Within 45 days of the expiration of the first six-month period following the effective date of this special order and within 45 days of the expiration of each successive six-month period, the applicant shall file with the Distribution Branch, Consumer Soft Goods Division, Office of Price Stabilization, Washington 25, D. C., a report setting forth the number of units of each article covered by this special order which he has delivered in that six-month period.

5. *Other regulations affected.* The provisions of this special order establish the ceiling price for sales at retail of the articles covered by it, regardless of whether the retailer is otherwise subject to Ceiling Price Regulation 7 or any regulation.

6. *Revocation.* This special order or any provisions thereof may be revoked, suspended, or amended by the Director of Price Stabilization at any time.

7. *Applicability.* The provisions of this special order are applicable in the United States and the District of Columbia.

Effective date. This special order shall become effective November 9, 1951.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13645; Filed, Nov. 8, 1951; 3:58 p. m.]

[Ceiling Price Regulation 7, Section 43, Special Order 15, Amdt. 2]

MIDDISHADE CLOTHES

CEILING PRICES AT RETAIL

Statement of considerations. Special Order 15 under section 43 of Ceiling Price Regulation 7, established ceiling prices for sales at retail of men's clothing and tuxedo trousers manufactured by Middishade Clothes having the brand name "Middishade."

This amendment to the special order substitutes lower selling prices to the retailer for those listed in the special order and reduces the corresponding ceiling prices for sales at retail. The Director has determined on the basis of information available to him that the retail ceiling prices requested and which are established by this special order are in line with those already granted, and are no higher than the level of ceiling prices under Ceiling Price Regulation 7.

Amendatory provisions. Special Order 15, under Ceiling Price Regulation 7, is amended in the following respects:

1. In paragraph 1 delete all after the sentence, "The manufacturer's prices listed below are sold on terms of Net 30," and substitute therefor the following:

MEN'S CLOTHING	
Manufacturer's selling price (per unit):	Ceiling price at retail (per unit)
\$12.40 ¹	\$19.85
\$39.85 ²	65.00

TUXEDO TROUSERS

Manufacturer's selling price (per unit)—Continued	Ceiling price at retail (per unit)
\$12.90 ³	19.85

¹ The manufacturer's selling price shall be \$11.90 per unit on purchase of two or more of the same items by a retailer. The ceiling price at retail shall remain \$19.85.

² The manufacturer's selling price shall be \$38.85 per unit on purchase of two or more of the same items by a retailer. The ceiling price at retail shall remain \$65.00.

³ The manufacturer's selling price shall be \$12.40 per unit on purchase of two or more tuxedo trousers by a retailer. The ceiling price at retail shall remain \$19.85.

Effective date. The amendment shall be effective November 8, 1951.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13639; Filed, Nov. 8, 1951; 3:56 p. m.]

[Ceiling Price Regulation 7, Section 43, Special Order 195, Amdt. 3]

F. JACOBSON & SONS, INC.

CEILING PRICES AT RETAIL

Statement of considerations. Special Order 195 established ceiling prices for sales at retail of men's shirts, sportswear, pajamas and sleepwear manufactured by F. Jacobson & Sons, Inc., having the brand names "Jayson" and "Excello."

Subsequent to the manufacturer's application dated March 12, 1951, but prior to the issuance of the special order, the manufacturer requested the exclusion of the "Excello" sportswear line from the coverage of the special order. This amendment excludes the "Excello" sportswear from the operation of the order.

Amendatory provisions. Special Order 195 under section 43 of Ceiling Price Regulation 7 is amended in the following respects.

1. In paragraph 1 delete the first sentence thereof, and substitute therefor the following:

1. The following ceiling prices are established for sales after the effective date of this special order by any seller at retail of men's shirts, sportswear, pajamas and sleepwear manufactured by F. Jacobson & Sons, Inc., 1115 Broadway, New York, New York, having the brand name "Jayson" and men's shorts, pajamas and sleepwear having the brand name "Excello" also manufactured by F. Jacobson & Sons, Inc. and described in the manufacturer's application dated March 12, 1951.

Effective date. This amendment shall become effective November 8, 1951.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13640; Filed, Nov. 8, 1951; 3:56 p. m.]

[Ceiling Price Regulation 7, Section 43, Special Order 398, Amdt. 1]

LANDERS, FRARY & CLARK

CEILING PRICES AT RETAIL AND WHOLESALE

Statement of considerations. This amendment to Special Order 398, issued under section 43 of Ceiling Price Regulation 7 to Landers, Frary & Clark, establishes ceiling prices at wholesale of electric blankets, food mixers, choppers, juicers, percolators, heating pads, table stoves, irons, toasters, blenders, combination sandwich grill and waffle makers; vacuum pitchers, vacuum bottles, food jars, lunch kits, vacuum bottle fillers, outing sets, motor luncheon sets, sportsman's sets, ice cube jars, leather carrying cases, jugs, cork packages, health scales, minute timers, corn mills, having the brand name(s) "Universal," "Landers," and "Stanley."

Special Order 398 established ceiling prices at retail for these same items, but did not establish ceiling prices at wholesale. Such wholesale ceiling prices were requested by Landers, Frary & Clark, in its application dated May 21, 1951, and upon examination it appears that those prices may be established under Section 43 of Ceiling Price Regulation 7. Therefore, this amendment establishes ceiling prices for the same article having the brand names "Universal," "Landers," and "Stanley."

Amendatory provisions. 1. Delete the title of the special order and substitute therefor the following: "Landers, Frary & Clark, Ceiling Prices at Retail and Wholesale."

2. Delete paragraph 1 of the special order and substitute therefor the following:

1. **Ceiling Prices.** The ceiling prices for sales at retail and sales at wholesale of electric blankets, food mixers, choppers, juicers, percolators, heating pads, table stoves, irons, toasters, blenders, combination sandwich grill and waffle makers; vacuum bottles, food jars, lunch kits, vacuum bottle fillers, vacuum pitchers, outing sets, motor luncheon sets, sportsman's sets, ice cube jars, leather carrying cases, jugs, cork package, health scales, minute timers, corn mills, sold through wholesalers and retailers and having the brand names "Universal," "Landers," and "Stanley," shall be the proposed retail ceiling prices listed by Landers, Frary & Clark, New Britain, Connecticut, hereinafter referred to as the "applicant" in its application dated May 21, 1951 and filed with the Office of Price Stabilization, Washington 25, D. C.

A list of such ceiling prices will be filed by the Office of Price Stabilization with the Federal Register as an appendix to this special order as soon as practicable. On and after the effective date of this special order, no seller at retail may offer or sell any article covered by this special order at a price higher than the ceiling price established by this special order. On and after the date of receipt of a copy of this special order, with notice of prices annexed, but in no event later than December 10, 1952 no seller at wholesale may offer or sell any article covered by this special order at a price higher than the ceiling price established by this special order. Sales may be made, of course, at less than the ceiling prices.

3. Delete subparagraph 3 (a) (4) and substitute therefor the following:

(4) the applicant shall annex to this special order or amendment a notice listing the style or lot number, name, or other description of each item covered by this special order or amendment and its corresponding retail ceiling price and corresponding wholesale ceiling price. The notice shall be in substantially the following form:

(Column 1)	(Column 2)	(Column 3)
Item, style, or lot number or other description	Wholesaler's ceiling price for articles listed in column 1	Retailer's ceiling price for articles listed in column 1
\$.....	\$.....	\$.....

Effective date. This amendment shall become effective November 8, 1951.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13647; Filed, Nov. 8, 1951; 4:53 p. m.]

[Ceiling Price Regulation 7, Section 43, Special Order 401, Amdt. 1]

GORHAM CO.

CEILING PRICES AT RETAIL

Statement of considerations. This amendment to Special Order 401, issued under section 43 of Ceiling Price Regulation 7, to The Gorham Company, corrects the applicant's designation as stated in the special order, to read "distributor" instead of "manufacturer."

Certain price lines were deleted by the distributor's amended application, dated May 31, 1951. Those price lines are added to those for which ceiling prices were established by the special order. This amendment also adds new price lines, for which application was made by the distributor on September 12, 1951.

The Director has determined, on the basis of information available to him, that the retail ceiling prices requested are in line with those already granted and are no higher than the level of ceiling prices under Ceiling Price Regulation 7.

Amendatory provisions. Special Order 401 under Ceiling Price Regulation 7, section 43, is amended in the following respects:

1. In paragraph 1, delete from the first sentence thereof the word "manufactured," and substitute therefor the word "distributed."

2. In paragraph 1, delete from the first sentence thereof the words "(and supplemented and amended in the manufacturer's application dated May 31, 1951)," and substitute therefor the words "(and supplemented and amended in the distributor's application dated September 12, 1951)."

3. In paragraph 2, delete the word "manufacturer" and substitute therefor the word "distributor."

4. In paragraph 3, delete from the first sentence thereof the word "manufacturer" and substitute therefor the word "distributor."

5. In paragraph 3, delete the words "manufacturer's application" and substitute therefor the words "distributor's application."

6. In paragraph 4, delete the word "manufacturer" wherever it appears, and substitute therefor the word "distributor."

7. In paragraph 5 delete the word "manufacturer" and substitute therefor the word "distributor."

Effective date. The amendment shall become effective November 8, 1951.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13641; Filed, Nov. 8, 1951; 3:57 p. m.]

[Ceiling Price Regulation 7, Section 43, Special Order 483, Amdt. 1]

MACKIE-LOVEJOY MFG. CO.

CEILING PRICES AT RETAIL

Statement of considerations. This amendment to Special Order 483, issued

under section 43, of Ceiling Price Regulation 7, to Mackie-Lovejoy Manufacturing Co., extends the date by which the applicant was required to mark or tag its branded articles. The extension is granted on applicant's demonstration of its inability to preticket in the manner set forth in the special order by the date specified.

Amendatory provisions. 1. In the third sentence of paragraph 5, delete "After 60 days from the effective date of this order," and insert, "After January 17, 1952."

2. In the last sentence of paragraph 5, delete "60 days" and substitute therefor, "90 days."

3. In paragraph 9, delete, "within 60 days after the effective date of this order," and substitute therefor, "After December 18, 1951."

Effective date. This amendment shall become effective November 8, 1951.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13643; Filed, Nov. 8, 1951; 3:58 p. m.]

[Ceiling Price Regulation 7, Section 43, Special Order 577, Amdt. 1]

FISHER, BRUCE & CO.

CEILING PRICES AT RETAIL

Statement of considerations. The accompanying amendment to Special Order 577 under section 43 of Ceiling Price Regulation 7 modifies those provisions relating to preticketing usually required by orders of this type. This amendment, designed to meet the particular requirements of the dinnerware industry, accomplishes the objective of notifying consumers of the uniform prices fixed under the order.

Amendatory provisions. 1. Delete paragraph 3 of the special order and substitute therefor the following:

3. On and after December 10, 1951, Fisher, Bruce & Company must furnish each purchaser for resale to whom, within two months immediately prior to the effective date, the wholesaler has delivered any article covered by paragraph 1 of this special order, with a sign 8 inches wide and 10 inches high, a price book, and a supply of tags and stickers. The sign must contain the following legend:

The retail ceiling prices for Fisher, Bruce & Company dinnerware have been approved by OPS and are shown in a price book we have available for your inspection.

The price book must contain an accurate description of each article covered by paragraph 1 of this special order and the retail ceiling price fixed for each article. The front cover of the price book must contain the following legend:

The retail ceiling prices in this Fisher, Bruce & Company price book have been approved by the OPS under section 43, CPR 7.

"The tags and stickers must be in the following form:

Fisher, Bruce & Company
OPS—Sec. 43—CPR 7
Price \$.....

Prior to January 8, 1952, unless the retailer has received the sign described above and has it displayed so that it may be easily seen and a copy of the price book described above available for immediate inspection, the retailer shall comply with the marking, tagging, and posting provisions of the regulation which would apply in the absence of this special order. On and after January 8, 1952 no retailer may offer or sell any article covered by this order unless he has the sign described above displayed so that it may be easily seen and a copy of the price book described above available for immediate inspection. In addition, the retailer must affix to each article covered by the order and which is offered for sale on open display (except in show windows or decorative displays) a tag or sticker described above. The tag or sticker must contain the retail ceiling price established by this special order for the article to which it is affixed.

Upon issuance of any amendment to this special order which either adds an article to those already listed in the wholesaler's application or changes the retail ceiling price of a listed article, the applicant named in this special order must, within 30 days after the effective date of the amendment, as to each such article, send an insertion stating the required addition or change for the price book described above. After 60 days

from the effective date of the amendment, no retailer may offer or sell the article, unless he has received the insertion described above and inserted it in the price book. Prior to the expiration of the 60-day period, unless the retailer has received and placed the insertion in the price book, the retailer shall comply with the marking, tagging, and posting provisions of the regulation which would apply in the absence of this special order.

Effective date. This amendment shall become effective November 8, 1951.

MICHAEL V. DISALLE,
Director of Price Stabilization.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13644; Filed, Nov. 8, 1951;
3:58 p. m.]

[Ceiling Price Regulation 7, Section 43,
Revocation of Special Order 411]

RICHARD PAUL, INC.

CEILING PRICES AT RETAIL

Statement of considerations. Special Order 411, issued to Richard Paul, Inc. on August 15, 1951, effective August 16, 1951, established ceiling prices at retail for women's shoe-hi foot and toe coverings having the brand name "Peds."

Richard Paul, Inc. has applied for a revocation of this special order, stating

that it is unable to comply with the provisions of the special order. The Director has determined that sufficient reasons have been shown for revocation of the special order.

This order of revocation requires the applicant to send a copy thereof to all purchasers for resale who have received notice of the special order.

Revocation. 1. For the reasons set forth in the statement of considerations and pursuant to section 43 of Ceiling Price Regulation 7, Special Order 411, issued to Richard Paul, Inc., on August 15, 1951, effective August 16, 1951, establishing ceiling prices at retail for women's shoe-hi foot and toe coverings having the brand name "Peds", shall be, and the same hereby is, revoked in all respects.

2. Richard Paul, Inc. must, within 15 days after the effective date of this order of revocation, send a copy of this order of revocation to all purchasers for resale to whom it has given notice of Special Order 411.

Effective date. This order of revocation shall become effective November 8, 1951.

MICHAEL V. DISALLE,
Director of Price Stabilization.

NOVEMBER 8, 1951.

[F. R. Doc. 51-13642; Filed, Nov. 8, 1951;
3:57 p. m.]